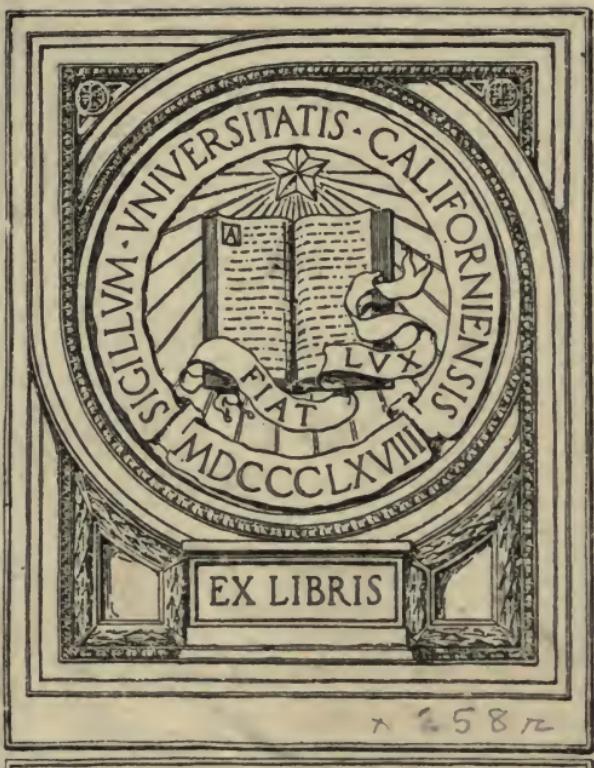
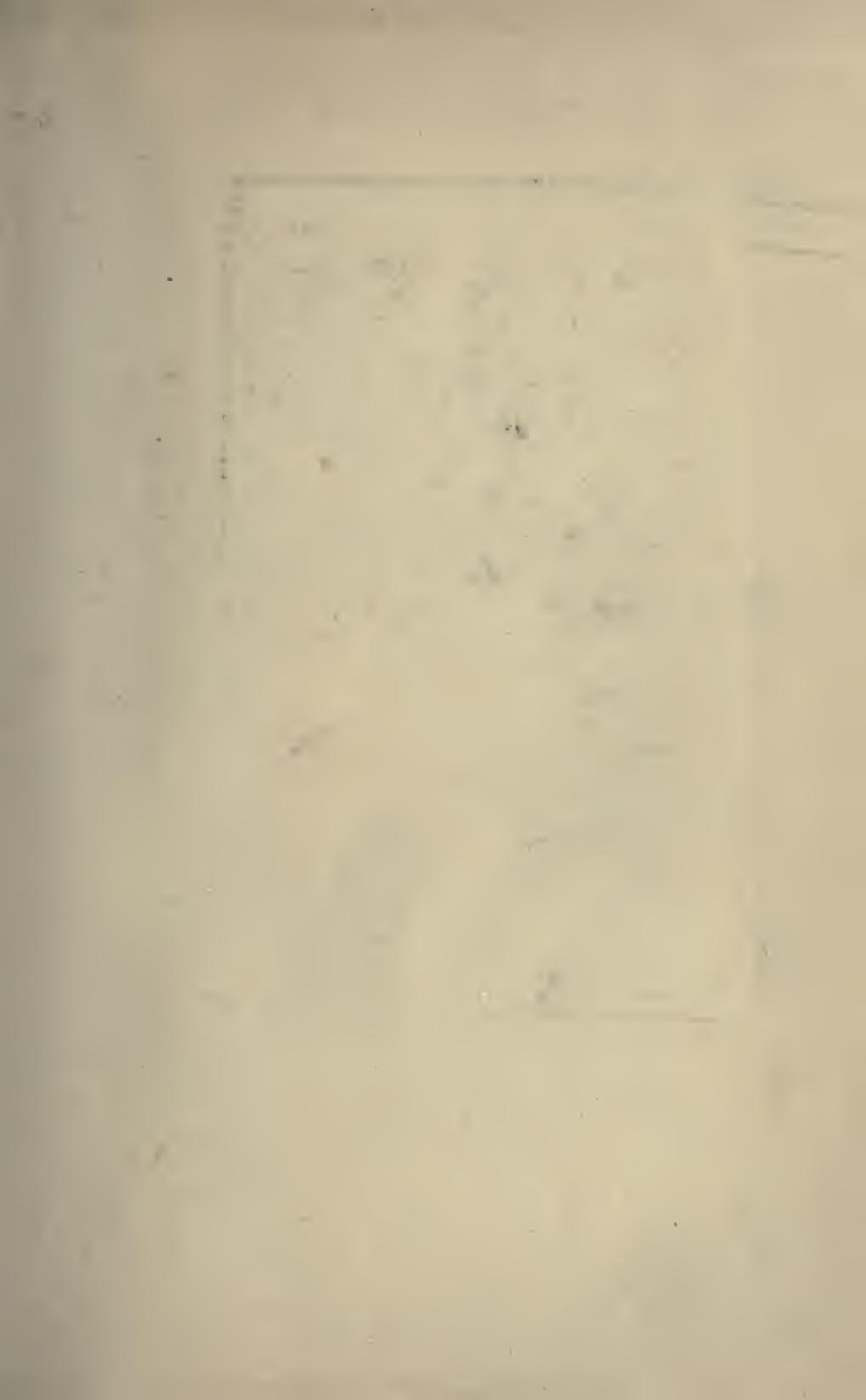


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## THE DEMOCRATIC MISTAKE



# THE DEMOCRATIC MISTAKE

GODKIN LECTURES OF 1909  
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## PREFACE

Since delivering these lectures in the spring of 1909, I have not had an opportunity to revise them until now. They are printed substantially as delivered; for the sake of clearness, part of the first has been transferred to the second, thus shortening the former, and lengthening the latter. I have avoided, as far as possible, attempting to enforce my points by referring to later aspects of the questions under discussion, presented by recent events. If the view taken of the matter is sound, the passage of time is sure to furnish new instances, and the reader will have no difficulty in making the application himself. As delivered, the title of the lectures was "Some Unsettled Questions Relating to Popular Government."

A. G. S.

NEW YORK, May, 1912.



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*LECTURE I*

GOVERNMENT BY DESIGN



UNIV. OF  
CALIFORNIA

## GOVERNMENT BY DESIGN

In receiving last year the very flattering invitation of the University to deliver these lectures, I felt that the request must be chiefly due to the fact of my having been for many years associated with the writer in whose honor the course had been founded. To his readers at large he was a journalist who spent his life in applying to public questions, constantly arising and demanding a speedy answer, the test of a rare skill, knowledge, and experience, and a devotion perhaps still rarer to the cause of good government; in the performance of this task, without fear or favor, and with unflinching endurance and remarkable success, he attained a commanding position and influence. To those who came into contact with him and shared his interest in political matters, he was something more than this; he was one of the writers (the list is not a very long one) devoted by their natural bent to the subject of the work of government, who have made substantial addi-

tions to our knowledge of the subject, and of whom it may be said with regard to many important topics: but for him we should not have understood this.

What he wrote, for instance, about nominations, and the dominant part they play in modern popular government, what he had to say about the decline of legislatures, government of cities, and what is called the "new" political economy, and Socialism, dispel some of the obscurity which surrounds these subjects, so that no one who investigates them can now afford to neglect his contributions to this branch of knowledge.

In recalling this it struck me that I might make these lectures of use, if at all, by endeavoring to examine and state the theory of political action as it seems to be implied (though not systematically analyzed and expounded) in his writings; attempting in the course of this examination to apply it to some of the unsettled questions which in our day, as in his, press upon us for an answer, and which our form of government forces us to answer as best we may. If in the course of our inquiry we do not discover anything very novel, I must ask you to remem-

ber that it is a very old and very difficult subject, in which new discoveries are seldom made. Such an attempt may, however, be the means of putting some of the old questions in a new light, and help us toward reaching some conclusion as to the future of popular government. If the path followed by him should prove to be a continuation of that opened by the famous investigators of the past, it may serve to strengthen our confidence in the possibility of further progress.

You will notice that my subject relates only to one aspect of government. Government as a whole embraces a great variety of topics. Such matters as sovereignty, the sphere or province of government, and the ideal or perfect state; the object, origin, and forms of government; government of the family, the tribe, and the church, the nature and powers of government, municipal and federal government; all are parts of a very complex whole, which also includes a further subject of inquiry —the structure and framework of the government of a State, or, in other words, its constitution by human design and contrivance. Now, as government is merely public business carried

on by men for certain recognized ends, there must be behind its structure and framework some force or power, and some principle of action, which can, through human will and motive, accomplish the political tasks set it; and the question is: can any principle of action be traced in popular government? And to come to the questions of the day, can we learn through an examination of the principle of its action anything about these questions? Does it throw any light on the referendum, or the initiative, or recall, or direct primaries, or nominations by petition, or the "machine," or the suffrage?

It is simply to the constitutional operation of government, and especially of popular government, so far as it is a work of human contrivance and design, that I wish chiefly to direct your attention.

But at the outset any one who attempts this is confronted by a serious difficulty. He finds not only that there is still no general agreement about the basis of political theory, but that there is actually a greater diversity of theory than there has ever been. Professor Lowell,<sup>1</sup>

<sup>1</sup> Now President Lowell.

in his recent volumes on the Government of England,<sup>1</sup> citing Taine in his support, declares that one feels like exclaiming, "I have discovered only one political principle, that a human society, and especially a modern society, is a vast and complex thing" and that "the only conclusion one can draw with certainty is that in a given environment a certain combination of causes produces the consequences that we observe," and that whether the same causes would produce exactly the same results elsewhere we cannot predict. Now, taken literally, this seems to leave us altogether without political theory. More closely examined, however, in the light of the whole book, Mr. Lowell, in his statement of his conclusion, does not mean to go so far. For without some theory we cannot be sure that the consequences we observe in a particular state *are produced* by a certain combination of causes. In England there is a highly paid judiciary, with a tenure during good behavior; the judges in general are appointed nominally by the Crown, on the recommendation of the Lord Chancellor, one of the heads of the bar. The Bench is distinguished for

<sup>1</sup> Vol. II, p. 506.

its learning, independence, character, and authority. Is this a case of cause and effect? From what do we infer that it is? An isolated case proves nothing. And what is cause and what effect? As it stands, we merely have a description of facts. Is it the King, or the Lord Chancellor, or their joint action, that gives England good judges? Or is it the tenure, or the salary? In the city of New York most of the judges are nominated by a representative convention at the suggestion of a private individual and are said to require backers ready to pay a very large sum of money for a nomination. The result is — almost universally criticised as unsatisfactory. Without some general theory of political cause and effect, it seems hard to throw any light on the cause by an argument from English experience. One system produces a good result; the other an unsatisfactory one. Surely we must inquire what difference of cause it is which produces such a difference of result.

To those who merely glance at Mr. Lowell's conclusion it seems to put forward formally a species of agnosticism about government which I do not believe he intends to maintain, but which is very popular at the present time, and

extremely convenient for those who wish to dismiss the whole subject from their minds on the ground of a supposed discovery that government can be nothing more or less than what it happens at a given moment and in a given place to be.

In reality I take Mr. Lowell's position to be quite different from this, because in other parts of his book he makes general observations of a searching character, which are evidently based on a general theory of the way in which man acts politically. For instance,<sup>1</sup> "there is probably no body of men less fitted to rule a people than a representative assembly elected in another land by a different race." And again<sup>2</sup> he says that office-holders, if doomed to lose their places on a defeat at the polls of the party in power, "will certainly do their utmost," *i. e.*, by political activity, "to avert such a defeat." "The keeping out of politics" and "the permanence of tenure must in the long run go together."

On the whole, comparing such passages as these with his general conclusion, and with what he has written elsewhere, the safest inference is that he wishes to emphasize the difficulty of

<sup>1</sup> Vol. I, p. 90.

<sup>2</sup> Vol. I, p. 147.

establishing firm theoretic ground as to government, not to exclude the possibility of it. This, therefore, is a wholly different position from that pure agnosticism which would sound the knell of political theory altogether, and relegate it to what Carlyle used to call the dust heap.

But it is not at all the position taken by all the world. Down to the period of the Civil War, our hand-book of government was the Constitution as expounded by the authors of the *Federalist*. Theirs were the great contributions of America to political knowledge, and even now it is usually admitted that they made the best use possible for the purpose in view of all that was then known on the subject. But there are many who tell us now that they were fundamentally wrong, or, at any rate, that we have outgrown what they wrote. Dr. Woodrow Wilson, the head of a university, and well-known as a writer on government, puts forward a radically new view of the matter.

In his work on constitutional government in the United States,<sup>1</sup> he says that the writers of the *Federalist*, following Montesquieu, made him a scientific standard, with the result that

<sup>1</sup> Page 56.

"politics is turned into mechanics" under his touch, and "the theory of gravitation is supreme." In this he thinks that they made a mistake, because the system of "checks and balances" is based on a theory of "blind forces," like those of nature, while government is "not a machine," but a "living thing," "accountable to Darwin, not to Newton."

Mr. Graham Wallas, in his "Human Nature in Politics," looks at the matter from another point of view. The study of government, he observes, is in an unsatisfactory position. The early study of government always went hand in hand with the study of Man, and about the middle of the last century it seemed to have reached a conclusion in the pretty general adoption of representative and democratic institutions; but the results of the democratic movement have produced much dissatisfaction. This has led to a new historical study of institutions, customs, manners, and man himself; and on these a flood of light has been thrown. On the other hand, but little attention has been recently given in works on government to the facts of human nature, although modern psychology has made great advances in its own field. Now, if the

study of government is necessarily founded upon a combined inquiry into the nature of man and the nature of government, the present "tendency to separate the study of politics from that of human nature" should "prove to be only a momentary phase of thought." Its effects, while it lasts, however, are likely to be harmful, and there are already signs that it is coming to an end.<sup>1</sup> He thinks, therefore, that the student of politics should begin "by mastering a treatise on psychology containing all those facts about the human type which have been shown by experience to be helpful in politics, and so arranged that the student's knowledge could be most easily recalled when wanted."<sup>2</sup>

It may be admitted at once that these three views are all based upon real and important facts. It is true that transplanted institutions do not necessarily thrive, and that we cannot predict that the same causes will reproduce exactly the same results elsewhere, and that we have made a great advance in discovering this. It is true that government has been found to be a developing organism, which you may, if

<sup>1</sup> Page 15.

<sup>2</sup> Page 123.

you choose, liken to a living organism, for it is an institution developed by man, and man himself is a product of evolution; though when Dr. Wilson says that Hamilton, following Montesquieu, turned politics into mechanics, and made the theory of gravitation supreme, and based a theory of checks and balances on "blind forces," I am bound to say that I have not been able to find in the *Federalist* or in *L'esprit des Lois* the foundation for the statement. So, too, Mr. Wallas has every reason for insisting that if we are to make any further progress in the study of government as a human institution we must found it upon certain definite assumptions as to the nature of man.

All three views are of interest as an illustration of the fact that government is always presenting to the inquirer more and more different sides. Mr. Lowell, impressed with the vast complexity of causation in government, warns us not to believe in the delusion that because an institution produces certain effects under one set of circumstances it will produce the same effects under totally different circumstances; Dr. Wilson, impressed with the fact of evolution in the animal and vegetable worlds in connec-

tion with the struggle for existence, finds something of the same sort going on in government; Mr. Wallas, observing the lack of any agreement as to first principles, is struck with the fact that for a generation or two we have been so devoted to examining government objectively that we have forgotten that a knowledge of government without some idea of Man is impossible. The Sociologists have a view of their own, but it is altogether too vast for analysis here. If you will go on and examine twenty recent writers on government, you will find that this same peculiarity of great diversity in the points from which they approach the subject runs through them all.

None of these views conflicts with a fact, the importance of which can hardly be disputed, certainly not by Americans, for it is the assumption which underlies all constitutions consciously contrived for the government of free states, viz., that government is not merely something to be observed and described, but also something to be *done* by means of power or force employed to effect the object. It is a branch of knowledge, but it also is a branch of action, or one of what used to be called the moral

sciences. Government is a task which is undertaken in order to effect objects of some sort. Its purposes may be of every variety. It may be to found a dynasty or to establish a free state, to administer a province, to carry on a war, or to raise a revenue. It may be to do good or to do evil; but a government without any purpose at all is hardly conceivable. Now a government with an object means that some man or men make use among other things of the power of other men's wills to effect the object in view, and to do this they must have a distinct idea of *how*, by what means, they can produce the effects they desire. To produce an effect by means of any power we must have some idea of causation in relation to it. Through observation of ourselves and others, and of government itself, we must believe that certain political arrangements lead through the motive power of human volition and action to certain results. This belief involves a theory of political action. If it is founded on a mistaken idea of cause and effect, it will be disproved by experience; but there must be behind any political contrivance or institution founded on design a theory of this sort. The necessity of a

theory for the work of government is no greater and no less than the necessity of a theory of education for any one who proposes to train the young, or a theory of military or naval discipline, or the management of a railway. It may be crude and simple, but there is no way of causing anything to be done by human beings without a prevision of the means to be selected to effect it, founded upon a theory of how men can be got to carry out the design of other men.

Looking at the matter in this way, we cannot but regard the manner in which we know political study to have developed as what might have been expected. Government would have been introduced and established as a convenient and essential institution long before it would have occurred to any one to inquire on what it was founded;<sup>1</sup> and when the inquiry began it would have been conducted as a single inquiry, as if we could first determine what the nature of government was as a whole, and what the nature of man was as a whole, and thus solve the question of the nature and scope of politics. As long as this idea lasted we should have a great debate, but within a comparatively narrow com-

<sup>1</sup> There is something closely resembling it even among animals.

pass. But as it began to be perceived that government was a name for a vast variety of causes, effects, and phenomena of all sorts pervading human society, and stretching from the dawn of history to the present time, and on into the unfathomed future, and that man was a name for a very great variety of races, differing among themselves in every way that human beings can differ, and existing in every stage of barbarism and civilization, and as immense stores of knowledge as to past history, customs, habits, and institutions accumulated, it would become clearer and clearer that the problem was indefinitely complex. Consequently the time would come when the discussion would present as many different aspects as the problem itself, and the theory would divide itself into as many different lines as there were seen to be branches of inquiry. Such a stage of political inquiry we seem to have reached; and, having reached it, we are now able, as our predecessors were unable, to discriminate sharply between the line of inquiry to which I propose to direct your attention—that which relates to the operation of government by human design—and all other branches.

As good an illustration as any of what is meant by a theory of cause and effect relating to political action is afforded by the case of the judiciary already referred to.

Experience tells us that there are a variety of causes at work in England which are not at work in New York, and that if we eliminate causes known to have nothing to do with the matter we may find in the end the efficient causes which tend to produce a good judiciary; and that these are a tenure during good behavior, a nomination by those whose interest is only to select a good candidate, an absolutely non-political appointment, and a salary which places the incumbent above either the suspicion or the temptation of corruption. We find that the same result follows whenever this method is pursued; for instance, we find in the United States a good federal judiciary side by side with a less satisfactory State judiciary. We find the same result in England, New Jersey, and Massachusetts—utterly different communities. We infer from all this that it is not a King or a Lord Chancellor that we lack in New York, but a secure tenure and a good nominating system. Moreover, all this reasoning is con-

firmed *a priori* by our knowledge of ourselves and of man in general. We know that a judge dependent upon the favor of one man and the money of another man, or even his own, for nomination and election, and again on the same favor for continuance in office and promotion, is unlikely to prove what we want, even if we pay him a large salary; the best men will not take office on such terms, but will prefer private employment; the men who do take it will be under constant temptation to requite the favor, and they will most easily requite the favor by favors, and will in consequence sometimes either be, or, what is as bad, be suspected of being, corrupt. From all this we infer that wherever you introduce the New York system your judiciary will *tend* to run down; wherever you introduce the English, or the Federal, the Massachusetts or the New Jersey system, you will do better, indeed as well as you can do. In any government the introduction of the system is a matter of prevision and design.

Again, to take another instance, the permanent civil service has, in England, for two generations, taken the place of a civil service manned by means of patronage. The reform of

our civil service has been copied from the English system, and the argument on which its introduction was based was merely this: that as the competitive system of examination for entrance, combined with promotion for merit and a secure tenure, had, in England, driven the poison of intrigue and patronage (developed here into "rotation in office") out of the government, so it would accomplish the same result here. The argument by which the change from our old system was supported was very like that relating to the judiciary. From what we know of man, we know that patronage for a large body of civil servants, whether party or individual patronage, means appointment by whim, or favor, or for partisan activity, or for still worse motives, and not for fitness; and that the only way to bring intrigue and corruption in the service to an end is to take patronage away altogether; that the only substitute under the circumstances is selection by open competition and tenure during good behavior; and that all this has been verified by experience.

To make a long story short, there must always be a theory of political action, and it is developed by experience of the nature of man, and

the study of cause and effect. This study and the experience on which it is founded have been going on for ages, and have produced definite results, the most important of which is that we now know finally how to do certain things in government almost as well as how to do certain things in a physical science. They can be done by those who are fitted to undertake the task. The Greeks did not know how to secure an upright and efficient judiciary; we do. They had very vague ideas of military and naval organization. We know how to manage military power and how to create a navy. There are certain principles of taxation and currency which, once grasped, are a permanent addition to political knowledge, which two or three centuries ago were not even dreamed of. We may reject the light and follow the darkness, but that is a matter of choice, not necessity.

A brief review of some of the more salient facts in the history of political inquiry may serve to make clearer this point as to the nature of political action.

All knowledge advances through dispassionate observation, study, and experiment; but questions of government so directly affect our

hopes, fears, tastes, prejudices, appetites, affections, and passions that it is extremely difficult to examine them dispassionately at all. For primitive man it is impossible, and this is one of the reasons why we find primitive government always closely connected with religion and superstition.<sup>1</sup> It is of divine origin; those who establish it are the progeny of gods; on the observances of religion all success in government depends, and its laws have a divine sanction. Except in the United States, remains of the ancient connection between church and state exist to-day everywhere, and in most modern states the connection is very important; in our time and country those who attacked slavery were met by the argument that it was of divine origin. In Italy it was only yesterday that the temporal power of the Pope disappeared.

But no sooner does inquiry into government as a branch of secular knowledge begin than another cloud is thrown over it by metaphysics. In this stage, words, abstractions, and even

<sup>1</sup> What standing Comte has to-day as an authority in philosophy I do not know; it was his opinion that all knowledge passes through three stages, the religious, the metaphysical, and the positive. Whether true or not as a law of the mind, it gives for practical purposes a very good picture of the history of our knowledge of government.

figments of the brain are mistaken for things; and causes and mysterious powers and forces are attributed to them to solve political questions. This stage has lasted to the present time and accounts for the violence of endless disputes about the "Nature of the State," and "Natural Rights," the "Social Contract," "Equality" and "Liberty," and "Social Justice."

The third stage, that of positive knowledge, comes when we are able to make our political conceptions correspond with real objects, cease to personify generalizations or treat them as causes, and learn how to analyze them into their component parts and reason about them, if we choose, uninfluenced by religion or metaphysics.

This stage came late.<sup>1</sup> The revival of learning did very little for government; in the whole period from the rediscovery of Aristotle down to the birth of our democracy, actual acquisitions of knowledge were scanty, while speculation still flourished in its stead.

<sup>1</sup> It must be remembered that these stages do not succeed each other in secular succession. In a given country they are most likely to overlap. In Japan probably all three exist side by side to-day. In the United States we are still grievously afflicted by metaphysics in politics.

Our day presents the most extraordinary contrast. In every direction the practical, *i. e.*, positive, knowledge of government has advanced with giant strides, while superstition and speculation have fallen more and more into discredit. The battle which had raged for centuries over the "three forms" of government came to a sudden end about the middle of the nineteenth century and its echoes have died away. It can hardly be said any longer that it is believed by the educated that there is an absolute best government. Law, which is at least half of government, has been analyzed into its fundamental conceptions by one school of writers, while another has traced its origin back to the remote region where they are lost in *status* and custom. The source of government itself has been traced to the natural wants of primitive man, while biology has even found an explanation of how man inherited the earth. What was to Plato the mystery of the true sphere of government has resolved itself into a multitude of subordinate inquiries into the best means of promoting the general welfare. The mighty creations of the mind which, with the aid of scholastic dogma, took possession of spec-

ulation and blocked the path of inquiry have turned out to be not causes or real existences, but abstractions, generalizations, ideals, often fitted now to aid and inspire the inquiry they had obstructed before.

We must add to all this positive analysis and knowledge what from our point of view is more important—that we have proved through political theory and experiment the possibility of accomplishing definite political objects by definite political means, and of deliberately incorporating in the body politic contrivances which, through the ordinary action of human motive, tend to promote the general welfare and advance civilization through government itself. It is almost a commonplace that many of what once seemed political dreams have become the realities of our day.

To mention only a few instances: the means as just stated, by which a good administration of justice can be secured, are no longer matters of speculation; they are known; the means by which patronage and the evils of patronage can be eliminated from the public service are known; the way to destroy hereditary privilege and open the road to advancement to merit

is known. So too is it known how "natural rights" may be actually secured and how the tyranny of the Executive and his agents may be prevented. We have learned how to free church and state from one another and at the same time promote the welfare of both.

By applying the principles learned under one set of circumstances to others, apparently wholly different, good administration has been planted and made to grow in such unpromising spots as the customs service of China, the fiscal service of Egypt. More remarkable than all, Orientals, supposed to be incapable of change, have in two generations grasped the meaning of political progress, and made out of an ancient and apparently stationary and helpless people a modern nation, sovereign and equal in peace and war with the nations from whom the lesson had been learned.

These things seem to have been accomplished *pari passu* with the growth of free institutions; but little attention has been paid to the connection between them and political theory. It is, however, this connection which is of such extreme practical importance. If politics were

really nothing but a growth, in which custom changes into law, and *status* into contract, and individual property develops out of communal, and aristocracies succeed monarchies and democracies aristocracies, and liberty produces license and license despotism, all our growth in knowledge would only confirm that primitive fatalism from which popular government by design was to rescue us. But if political theory can be used to achieve definite ends by definite means, then we seem to stand upon the threshold of a new world, in which we may look forward to indefinite progress.

Any theory of government by design, as already explained, so far as it relates to the actual machinery of government itself, must be founded upon some principle relating to structure and operation with reference to the object and purpose in view. The whole discussion about the object and purpose of the state resolved itself after the close of the feudal period into an agreement that it was the *general welfare of the community*. An equally difficult question had been how was this general welfare to be secured. Bentham, whose "greatest happiness of the greatest number" meant pretty much the same

as the general welfare, inquired in what body can political power be lodged, whose interest will coincide with that of the body whose welfare is to be promoted? The answer was that no such body existed except the community at large. The human agents employed in the work of governing must be made responsible to the community by means of representative parliamentary institutions, and representative parliamentary institutions must rest on a suffrage of some sort. Bentham went farther than this, and said universal suffrage. Most of his contemporaries contented themselves with such suffrage as then existed.

Now, what I hope to show is, not that this view of the subject is false, for it marked a great advance in political theory, but that it is a partial view. What it leaves out of sight is that government is a very complex and delicate piece of machinery of which we have given a very imperfect account when we say that it all rests *on this sort of responsibility to the people*. The theory of political action which includes this and is necessary to its complete comprehension and application is that the whole structure and framework of every government con-

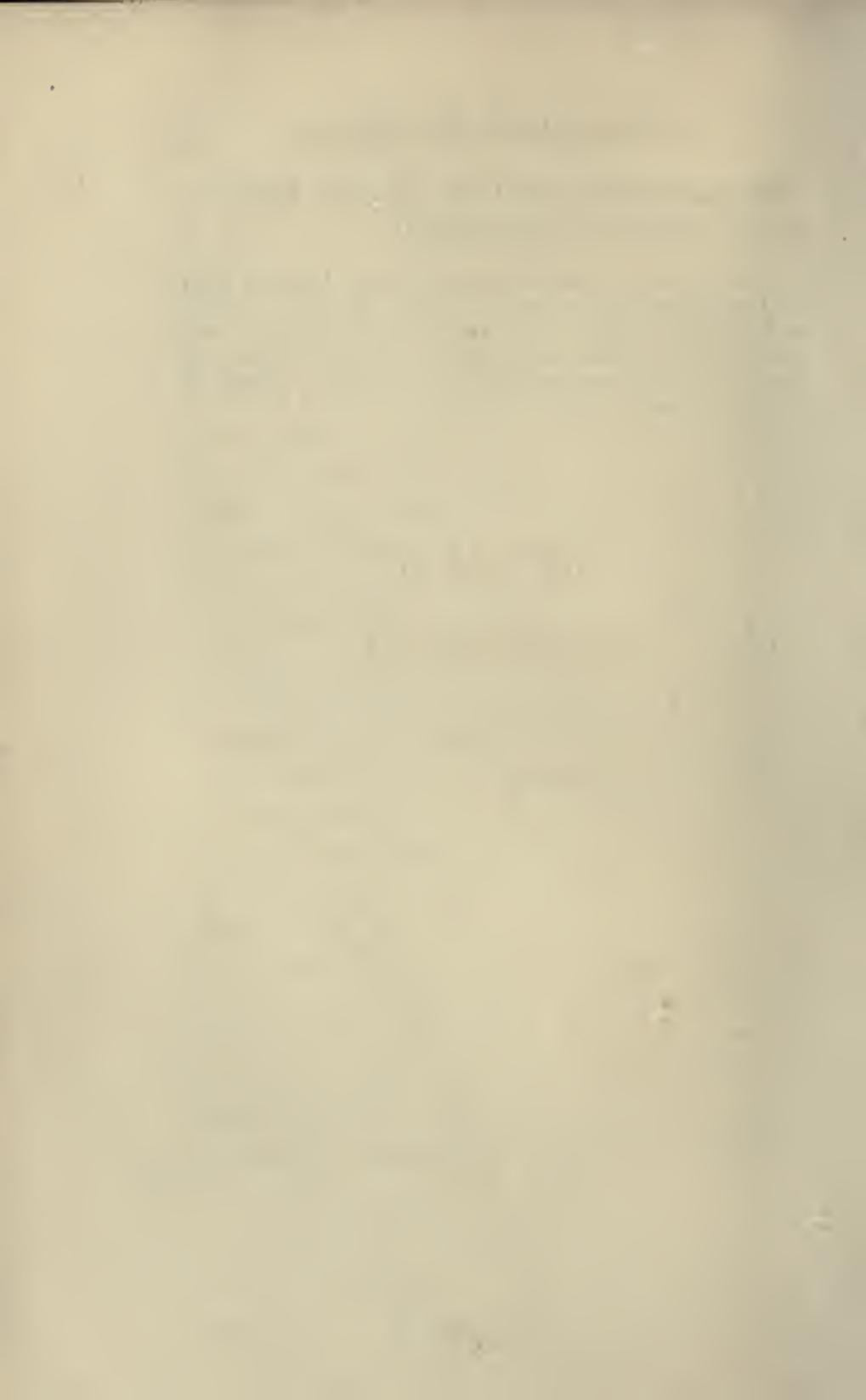
sciously carried on for the purposes of the state rests, and always must rest, on *responsibility of an infinite variety of species*; that it is through responsibility of every variety and degree that government by design acts; that it is through an artificial use of motive in all directions to secure responsibility (that is, to secure the actual doing of the work of government) that government by design as we know it has attained its present importance and momentum.

In other words, when Bentham reached his conclusion that responsibility to the people through universal suffrage was to be the *foundation* of popular government, he meant merely that and nothing more. The equally important question, how far responsibility in office was to be secured by other means, he did not broach. He had merely found out, for modern free states, the answer to the question—where is the sovereign, and by what means can his will be ascertained? That this answer could ever come to be used as a universal solvent for all questions in government, of responsibility in the performance of their tasks by the agents of the sovereign, never entered his mind.

To sum up what has been said, it is of the essence of all conscious government that its structure is planned or contrived on some theory of operation, which again involves some theory as to the nature of man and the nature of government. The public business is made up of tasks judicial, legislative, and administrative, the performance of which is intrusted to selected agents, who are made answerable for them. ✓ The operation of designed or contrived government depends everywhere upon the principle of political responsibility to those who design or contrive it. ✓ So far as this is successfully worked, the contrivance effects its objects and the government attains its ends. ✓ It is as true of popular government as of the most rigid military despotism, that its success depends throughout on effective responsibility for the performance of tasks imposed. By what means is this responsibility to be attained? Any theory of government which does not find a true answer to this question must be useless; and may, if acted upon, prove highly dangerous. Any inquiry into responsibility of this nature involves an inquiry into the ordinary operation of human motives in the discharge of political functions.

This again must depend upon the view which we take of man and of government.<sup>1</sup>

<sup>1</sup> At the outset I wish to guard against any idea that I am engaged in analyzing the nature of the tie between the *citizen* and the State—though it is hard to keep this entirely out of view. See James Bryce's interesting essay on "the force that brings and keeps men under governments," *i. e.*, Obedience. "Studies in History and Jurisprudence," vol. II, p. 1.



*LECTURE II*

RESPONSIBILITY



## RESPONSIBILITY

In this lecture and the next I propose, *first*, to examine further what is meant by theories of the nature of man and of government, and to show the connection between Responsibility —the force upon which all government depends —and the view we take of the nature of man and government; *second*, to examine some of the different ways in which Responsibility pervades government; and *third*, to examine some of the differences between that Responsibility to the people which is enforceable through the ballot, and other species naturally enforced by other means.

Almost all the old writers on the subject of man's nature wrote unconsciously under the influence of the mistaken idea that a systematic abstract knowledge of it as a whole was possible. One of the great stumbling-blocks in the path of knowledge has always been the passion for definitions. It seems to take hold of the mind in the same way that the inclination to attrib-

ute phenomena to a single cause does, and generations live and die a prey to it without knowing the fact. ✓ When we learn that complex phenomena are generally attributable to a number of causes, and that vast abstractions and generalizations cannot be defined, we have made a wonderful step forward in the ascertainment of truth. ✓ That man is a "featherless biped" is as true a definition as it ever was, but confuses rather than adds to our positive knowledge of him in any way. Simple definition failing, teachers of dogmatic religion and almost all the old writers on government began by assuming that they could establish a conception of the *nature* of man as a whole. Some of the effects of these attempts may be seen in descriptions of the proclivities of man, usually much to his discredit. Thus, his nature is *evil*; he is homicidal, thievish, vain, cruel, perverse, gullible. The theory of man's innate depravity and corruption is very convenient for those who wish themselves to supply him with government, for no one can possibly be more in need of it than one innately depraved and corrupt; and it is indeed hard to find in this view any warrant for believing that he will ever be able to govern him-

self. Christians who have held to this view, if conservative, have often cut the knot by assuming a religious sanction for existing government as a necessity. Man is depraved, steeped in sin, and full of wickedness; therefore he needs a government to direct his steps and keep him in the right path. Such a government, vested in a particular class or dynasty, has actually been divinely provided for him. He ought to obey it, for what it ordains has a higher than human sanction. But this theory cannot outlive the belief in the system on which it is founded; it must disappear as soon as it is generally believed that no one governs by divine right, and that government and the state are purely human institutions. When it once clearly appears that man himself has introduced upon earth all that is good in human customs and laws as well as all that is bad, it is no longer possible to found our theory upon his total depravity, or even necessary selfishness, to save him from which divinely appointed guardians are necessary.

The other side of the picture proves to be that this same depraved and corrupt creature is capable of acts of great wisdom and virtue, and displays qualities which give him at times a very

high opinion of himself. He is capable of great bravery, of great self-sacrifice; goes to the stake rather than profess a belief which he knows to be false, throws away his life for his friends or his children, often for the sake of saving a mere stranger; dies in battle gladly for his country, and, in fact, continually furnishes proof that he is, potentially at least, noble.

I have collected almost at random a few instances of the singular diversity of opinion about the nature of man such as every one comes upon in looking into the subject, which may serve to illustrate this point. Mill—if I remember right, in his essay on Bentham—dwells on *sympathy* as one of man's marked traits, which no one disputes; but he seems to overlook almost entirely the fact that, owing to his appetites and passions, antipathy may be at times as powerful, and when we reflect on the countless wars of religion and ambition and greed, of which history is full, and in which millions of lives have been sacrificed, and into one of which he may, even now, at any moment be plunged; upon the countless judicial murders that he has committed, and the violence of race prejudice and the massacres it has caused and now causes in

our own day, we cannot but feel that any account of man which leaves antipathy and prejudice out will be at least as one-sided as one which forgets the power of sympathy.

In Burke's "Essay on the Sublime and Beautiful," very popular in its day, Burke, who was to be the great defender of popular rights against tyranny, makes the statement that we "have a degree of delight, and that no small one, in the real misfortunes and pains of others"; that we do not "shun such objects" and that "we must have a delight or pleasure of some species or other in contemplating objects of this kind." To this he adds that "terror is a passion which always produces delight when it does not press too close." Again, "There is no spectacle we so eagerly pursue as that of some uncommon and grievous calamity." And again, "the delight we have in such things hinders us from shunning scenes of misery." The instances he gives are the pleasure derived from reading of the history of the ruin of the State of Macedon, the destruction of Troy, the violent death of Cato, and the ruin of the great cause he adhered to. We may agree with his statement that a pleasure is derived from theatrical spectacles

of a tragic nature, or tragic narrative; but that we actually enjoy the suffering of others and linger with pleasure over the misery of our fellows, most of us would be inclined to deny with some indignation.

Another illustration is afforded by the Declaration of Independence. Man is born free and equal with certain inalienable rights. This, on the other hand, is denied as a statement of neither scientific nor historic truth, and accordingly it has been furiously attacked by all anti-democratic writers.

Sir James Stephen, in his book on "Liberty, Fraternity, and Equality," protests that man is at the bottom not fond of liberty or fraternity, and least of all equality, since his great aim in life is to enjoy the fruits of superior wealth, education, and position, an aim which is absolutely fatal to equality. What man really likes, he declares, is inequality. He loves to excel his fellows in wealth, honors, titles, power, and distinction.

Even if we confine our inquiry to our own day and generation we meet with the same confusion. Make out a list of a man's virtues and we are answered by a list of corresponding vices.

Enumerate all the appetites, passions, and objects of desire and aversion that we can think of, and we are immediately reminded of the impossibility of predicting what the result of them in any given case will be. The very happiness which he pursues he throws away under the influence of a stronger feeling.

All this relates to the study of the nature of man as a permanent type; if we were to go into it historically and anthropologically, we should find ourselves in a worse maze, for we should learn that man's nature is not constant, but changes in process of development, so that it has been said that the lowest savage in the Australian bush is not as much above the anthropoid ape as the most advanced specimen of civilized man is above him. And in one age he is habitually cruel, and in another humane; in one community a monogamist, in another a polygamist; in one period governed by unchanging custom, in another by a passion for competition and gain.

Mill observes on this subject that mankind is much more thoroughly agreed that all men are of one nature than as to what that nature is. But for purposes of government it seems to be

absolutely necessary that we have some theory as to this common nature, which will at any rate free us from the difficulty of doing what we never can do by definition or synthesis. We are not on solid ground if we can find out nothing more than that man is a creature of contradictions; that he is attracted by ideals which are constantly present; that he is attracted by temptations which are inherent in his nature, toward evil and deterioration; that he is also capable of a mental state of indifference; that he is both evil and good, both perverse and docile, both selfish and unselfish, devoted to self-love, and yet capable of the highest efforts of altruism. If you will examine La Rochefoucauld's Maxims, you will find that he makes the *primum mobile* of human nature to be self-love; if this means only that our happiness centres in ourselves, since we do not *feel* outside ourselves, I suppose it is undeniable; it cannot mean that we *act* solely for selfish ends.

Another cause which has always retarded the acceptance of a positive theory of political action—down to our times in fact—was an analogous mistake about the nature of government. The problems of government were first attacked

as a whole. What is the state? What is our highest idea of a state? Plato and Aristotle were the first to break this whole up by showing that it manifested itself under three great forms. When the study of government was revived after the Middle Ages, the "three forms" of government were fastened upon, not as a matter of observation in Greek Constitutions, but as a fundamental analysis of all government. If there were only three forms of government, obviously one must be the best, and so a long battle began between the rival forms, which lasted down to the time of Grote's brilliant vindication of Grecian Democracy against Mitford. This controversy failed to settle the matter because in it again the three forms, Monarchy, Aristocracy, and Democracy, were treated as if they really represented three principles from which the whole condition of the state could be deduced, instead of being three different sources of sovereign power, which corresponded to different sets of circumstances in different states. Pope, a rationalist, cut the knot by saying:

For forms of Government let fools contest;  
That which is best administered is best.

Blackstone gives a solution of the puzzle popular in his day when, quoting Cicero in his support, he says that Englishmen need not trouble themselves so much about it; each of the three forms had its advantages, while England had evidently the best possible government in the world, because in her constitution she not only had all three,—Monarchy, Aristocracy, and Democracy,—but better than that, each form was exactly balanced by the other two, so that neither could ruin either of the other two.

Nobody who has not studied the subject with care is apt to recall how full all literature is of futile attempts to make deductions from the nature of man and the body politic as a whole, with the aid of metaphysical and religious speculation and of metaphor and analogy, and to dogmatize upon the nature of government and, as I said in my last lecture, how very little positive reasoning is to be found about either except within the last hundred and fifty years.

For instance, a favorite parallel between man and the state has been greatly relied on in lieu of argument. Man is born, grows to maturity, grows old and feeble, and finally dies. So do states. Hence, it is argued that there is a neces-

sary period of life for states and that states must die. Now that there is an eternal parallel between man and the state is true; it would be strange if there were not, since the community is made up of men—but it is only an analogy. For human beings there is a fixed period of life, and death comes from inevitable physical causes. We know within a few years what the average length of a man's life is and very nearly how long he can live. Even Metchnikoff does not imagine that we shall ever by the most improved regimen live more than one hundred and fifty or two hundred years. But there is no physical limit to the life of states any more than to that of any incorporated body. The Roman empire lasted for centuries. The English state has lasted for centuries, and may last for centuries more. There is no period fixed by nature. A state may come to an end through internal corruption; but it generally comes to an end by the violence of its neighbors. Again, man is born of woman by a process which we call reproduction of species; the birth of states is due to chance, to force, and to design. The point of absolute dissimilarity lies in the fact that one sort of life is individual, the other non-individual and corporate.

What is government? What is its origin? What is its proper sphere or province? From Plato to Jefferson, as already explained, there is a long line of brilliant investigators of these questions who try to answer them by *a priori* means, who seem at times to throw a flood of light upon them, but who do not advance matters. "The Republic" is to-day almost as entertaining a book as when it was written, but it is no political text-book. Its principles of reasoning are to us in great measure false and illogical. The line of distinction between *clear* ideas and *true* ideas was not yet perceived. Rousseau's social contract has become a recognized illustration of a gratuitous assumption. The whole fabric of definitions and deductions has been superseded by the positive view that government is a complex institution which cannot be defined; that its origin can only be investigated by the historical path, and that its sphere cannot be laid down abstractly. Of all the Utopias invented by man not a single one seems to have a secure hold upon the popular fancy except that of Socialism, a dream which for a variety of reasons is peculiarly attractive to democratic communities. But the process by which Utopias

are manufactured is as well understood as the natural history of any intellectual figment. It derives its life from the tendency of the mind to give a causative force to an ideal. First take an Ideal—Liberty, Equality, Fraternity, and Peace are always those which recur to the mind, because they are beautiful—personify it, and endow it with what power is needed, and you can make any Utopia you please. The thousand years of peace is one of the oldest, although in practice fifty years of peace seems to be as long as human nature generally can endure the strain; the Millennium easily goes out of fashion.

Man, Aristotle says, is a political animal; and this differs from anything said before in being a piece of accurate description which means that he is capable, at a certain stage of his development, of producing what is called a state. There is no such thing as abstract government or an abstract state, any more than there is an abstract man, and consequently the varieties of states are almost infinite. Its form may be monarchical, or aristocratic, or democratic, or a mixture of the three. It may be single or federal. It may be large or small. It may have all sorts

of objects, and in its sphere may include any thing. Sparta, one of the earliest specimens of a Socialistic state, was a camp. Public meals, as an incident of citizenship, were a widely spread institution in Greece. It may have a feudal organization as in the Middle Ages; it may be military like Rome, or primarily industrial, like England and the United States. It may, like Russia, be very intolerant of individual freedom, or it may cultivate individual initiative. It may have a very limited suffrage, or a wide one; it may have an imperial head, or a parliamentary system combined with a royal executive, like England; or it may have a presidential system, like the United States. Under all circumstances, however, the following are among the features it usually exhibits.

It includes the idea of man and a body politic, subjection or citizenship and allegiance, and responsibility to a head in control of the whole, the power to direct and change the whole thing being lodged in this head. This institution is so contrived as to do for man consciously things which man cannot do for himself without it. It gives him in his pursuit of *various objects of desire* security against external and internal

dangers. It may furnish him with other things; for instance, it has furnished him with a calendar, with education, with religion, and it can furnish him with food, clothing, and all the necessities of life; that is, it may directly furnish him with objects of desire, or it may secure him in the pursuit of these objects. It enforces promises, and redresses the wrongs done by his neighbor, or prevents them (the whole body of the civil law). It furnishes him with a police and with soldiers and sailors for defence externally. Leaving out of view foreigners, it provides all this for its citizens living within a definite boundary. It always acts through human agents, and all its powers and functions may be united in the hands of a single person. In this case, the abstraction which we know as sovereignty becomes indistinguishable from the individual who is called the sovereign. Under ordinary circumstances, an absolute sovereign is obliged to delegate most of his power among various agents, so that there is even here a distribution of powers; and a classification of them becomes possible. In the opposite case, of the supreme power being lodged in the body of the community, all the ideas connected with it are

vastly more complicated. The body politic then becomes very like an ordinary corporation. Like any other corporation, its powers are exercised by agents, while the activity of the sovereign is mainly confined to selecting those who are to so exercise its powers, or to deciding *questions* submitted to it by itself or its own agents.

Looking at the matter in this way, we need not for our purposes trouble ourselves about the historical origin of government. This really concerns us little more than the origin of life. Probably governments were of diverse origin. At any rate, the origin of almost all of them is lost in the night of time. All that is necessary for us to consider is that we find in a vast number of actually existing governments the features mentioned; and that when a state is created, the contrivance, or institution, is superimposed upon the habits and customs of the community already existing and handed down from father to son for generations. Existing customs are presupposed in governments; government is itself an artificial institution based in great measure on custom; and we should add to our collection of fundamental facts that habit

and custom in man are coeval with his existence, are much older than either law or government, and are capable of transmission, conscious or unconscious, from generation to generation. Nor can we leave out of view morality or religion, but into the origin of these again it is not necessary for us to inquire. We take the moral system and religion of a state as a fact.

In all states, even in self-governing communities, government is carried on by a minority of the whole—with us the body of adult men. And it is in the hands of a still smaller number that political power is actually from day to day lodged. The popular sovereign holds his power — ordinarily in reserve. The work of government he intrusts to subordinates. This fact, in the discussion of these matters, seems to have been resented, and its existence is often denied by advocates of the democratic form. In Tammany Hall, in which one man rules supreme, and in which he selects every candidate for office, it is annually pretended by him and his followers that he does not know in advance what “the slate” is going to be until the convention has deliberated upon it. This pretence, however, is the tribute which the machine pays to democ-

racy. But the fact can hardly be disputed. It corresponds with the fact that a small number lead in science, invention, the arts, etc., in which case it is not questioned, probably because they do not attempt to govern. The initiative in every direction generally comes from one or a small number.

X Now, taking all of this for granted, the only principle of action on which the sovereign—one, or few, or many—can rely to get his work done is that invoked by such widely different writers as Bentham and Hamilton—Responsibility. It is invoked by these two writers for different, though related, purposes. Bentham, whose object was to answer the question, by what means are the abuses of political power to be held in check? answers it by saying through responsibility to the only body of persons whose interest accords with the welfare of the community and good government; *i. e.*, the majority of the community through the ballot. Hamilton, in the *Federalist*, relies upon it, though he does not perhaps expound it, as the mainspring of government itself. The idea of legal responsibility is a commonplace. It has been studied for centuries. That of political responsibility, of which

legal responsibility is a branch, had been, before the publication of the *Federalist*, hardly written about at all.

So far as the government of a state is a human contrivance and based on man's being a political animal, it implies, as has been stated, that there are always those who govern and those who are governed, for certain political ends. That in a democracy those who govern are also governed does not matter. The *work* of government from day to day is still done by a few. Neither a popular sovereign, nor a sovereign who is a single human being, governs without employing agents, and the relation between these agents and the sovereign we describe as one of responsibility. Those who actually discharge the functions of government, whether as judges, legislators, governors, sheriffs, or postmasters, or tree-wardens, are responsible either directly to the sovereign or to some representative of the sovereign, who derives his powers from the sovereign. This responsibility is partly ethical, because it arises out of the relation itself. We say that any one who undertakes the performance of a duty is morally bound to the performance of it. It may also be religious. Where a

state appoints priests the appointee no doubt feels his political accountability re-enforced by that to a higher power. But political responsibility in itself is something different from and additional to all this. It means that the government itself imposes on the agent himself a responsibility to itself, which is binding, apart from any moral or religious accountability that there may be. That man is able to secure for the state and willing to accept toward the state this kind of responsibility is what makes government possible; without it there could be none. Responsibility, then, may be dissociated in the mind from questions of habit, or customs, or opinions, or sentiments. These are matters of growth, debate, conviction, and feeling. By those who undertake, whether of their own accord or by the invitation of others, to administer government, all these are found, it may be said, "in place." Government takes them for granted. It may try to modify them in its own interest; but whether it does this or not, its operation, relating solely to the functions of the government and the tasks it undertakes, may be distinguished from them. When Poland was divided among its more powerful neighbors,

they found among its habits a common language dear to the inhabitants. When one of them made up his mind to suppress this language within the part of Poland taken by him, he took that repulsive task within the scope of the sphere or province of government; but the means by which he undertook to suppress it were human agents. These agents were instructed to supplant one language with another, and because they could be made responsible in a variety of ways the work was more or less thoroughly done.

When the South was conquered by the North and the Union restored, the suffrage was given to the blacks, and the occupation of the South by troops and a variety of other agents was continued for the purpose of securing the exercise of the right. Those in control were held responsible for the result, and accordingly, so long as this system was kept up, political power in the several States was practically vested in the negroes. This was totally contrary to the habits of the two races, and for the time being suppressed them; but when the troops were withdrawn this régime came to an end, the race habits reasserted themselves, and the negro su-

premacy disappeared. This is a perfect instance of what I mean when I say that political responsibility may be a contrivance for designed ends quite different from a natural growth, such as a custom.

Persecution and massacre have been used from the earliest times, and are still used by governments called civilized, to accomplish political objects. Depopulation and extermination of disagreeable neighbors were once thought to be within the legitimate "sphere of government." These ends are accomplished generally through the military arm of the state, on the pretext of self-defence or self-protection. No better instance could be given of responsibility. The agents employed are called upon to destroy the lives and property of unarmed and defenceless people with whom they have no quarrel. That men can always be found to do this horrible work is a strong illustration of the tremendous force of the principle of political responsibility pushed to its logical extreme. It is not, as Lord Brougham ludicrously pretended, the lawyer who may be called upon by his responsibility to his client to ruin everything that is worth living for, but the soldier, who is made responsible for

absolute obedience to the orders of his superior, no matter how shocking the consequences. But the military function of the state is one of the oldest and most universal among men. The principle of military responsibility is absolute obedience.

The Ship of State used to be a favorite figure. Sir John Seeley has pointed out that our conception of government in general certainly ought to include that of a vessel; and as an illustration of responsibility analogous to that in the political world nothing could be better. What is it that in the last resort the captain falls back upon to maintain that discipline without which the ship and everybody on board would be in constant peril? An iron responsibility to him, which means that the extreme penalty is death. We are so accustomed to this that we do not think of it, but in earlier times when sea-going was chiefly coastwise, the ship's company on the Ægean did not recognize any such necessity; their nautical habits led them to look upon a voyage as a venture in which every one in case of danger should have his say. The absolute power of the captain and absolute responsibility of the officers and crew are an artificial con-

trivance and the mature invention of better seamen.

Responsibility, then, I take to be the fundamental spring of everything in government. The success of its employment is a test of civilization. It exists in a family, it exists in a tribe, and *a fortiori*, it exists in a state, *i. e.*, in a community living within a separate territory, bound together by common laws, subject to a common sovereign. It is the use of an artificial system of responsibility by the state with which we have to do, and especially by the state under a popular form of government. You will observe that I am at any rate more modest in my demands upon your assent than most writers on this subject. For I ask you to admit, what has been generally conceded since Aristotle's time, that man is a political or state-making animal; and also that he effects political objects through use of an observed fact behind which we cannot go, viz., that one man can induce another to undertake and become responsible for the performance of political tasks. What the means employed are does not, at this stage of our inquiry, matter. It may be persuasion, it may be force, it may be some tie of blood or

habit, it may be simply by furnishing him with the means of support; it may be by place, rank, honors, and promotion. Whatever it is, it results in responsibility; that is, answerability, and not answerability to God or the moral law (though these may coexist with it), but political answerability. What we mean by political ends we need not define, because every state and every age gives them a more elastic or more restricted meaning. Whatever they are, the means by which responsibility for public work is secured are such as we have described. To suppose that responsibility in a free government is merely coextensive with responsibility to the electorate through the ballot is to introduce confusion into the subject.

Responsibility, then, is the root of the power of the state; it is a force which cannot act except through human motive; and it is clear that the persons acted upon must be agents, mediate or immediate, of the sovereign; and to verify this, so far as it concerns our own government, you have only to look into the constitution and statutes of any American state. These agents must discharge some function, and for that purpose have the requisite power; that is, they

must be judges, representatives, senators, governors, assessors, selectmen; and the function is prescribed for them by the constitution and laws adopted by the sovereign or its agents. They must consequently be appointed or elected to their offices, which they must hold by a longer or shorter tenure, and they must either discharge their duties gratuitously, or they must be recompensed by the state. Their tenure may be for life, for good behavior, for a limited term; or during the pleasure of the sovereign; it might be, as elsewhere, hereditary.

When we talk of these agents being vested with power, what is meant is that, as the sovereign is conceived of as the source of all power, he might discharge the function without resorting to agents. Early kings, for instance, were also judges and commanders in chief. In Athens the whole body of citizens tried cases. When judicial power is delegated to agents, we conceive of the courts having for the time the whole judicial power which the sovereign people possess or the king possesses.

When we talk about motives being acted upon, we are obliged to return to what we observed about man, and insist that there are constant

motives which can be acted upon so as to result in political responsibility. We find as a matter of fact that among the motives always relied upon as constant have been the necessity of support, the desire for power, the dread of "censure" or opinion, or of punishment, and the love of approval, rank, honor, and reward. That is, in addition to all sorts of moral and religious motives, these are the motives commonly appealed to to secure responsibility. And they have been found sufficient. It is as well established as any fact can be that by resorting to this system all the governments in the world have been established, and are in operation.

It may be worth while to observe that this shows one respect in which the life of the body politic is analogous to that of the natural man. Man is sovereign over his own affairs, as the state is sovereign over him; he himself is under a moral responsibility, which means an accountability for his acts for violations of what we call the moral order of the universe. This moral order operates through a system of rewards and punishments, *i. e.*, through motives, and, if we go one step farther and introduce a religious sovereign, we are forced to admit that he too

governs the world exactly as an earthly sovereign does, through the principle of responsibility.

Now, all this theory runs by implication through the pages of the *Federalist*, and it is the theory on which the entire framework of the federal constitution is founded. There is in it no trace, so far as I can see, of any belief in blind forces, nor any resemblance to mechanics. It is all design of the highest kind, and design resting upon just that knowledge of the usual operation of human motive which enables us to make use of and be of use to our fellows in every other direction, and the final mastery of which is attributed by religion to God.

The means, then, by which responsibility is secured must vary with time, race, and circumstances, but is always through some motive or motives the operation of which is so uniform that we are justified in assuming it to be constant. In primitive times two such motives are the religious bond and the tie of blood, and it is owing to the strength of the former that we find oaths so uniformly used to bind the conscience of those who exercise office; the very fact that the King was the Lord's anointed made malfeasance in acting for him a kind of sacrilege.

We still administer an oath of office, but in modern times we have lost the belief that this is of the essence of the matter, and allow the incumbent, if he has conscientious scruples against an oath, to make an affirmation—a proceeding which, until comparatively recent times, would have seemed either futile or wrong. The tie of blood which runs through all early tribal government had a force that we know nothing of. In tribal government the sympathy of kindred blood, even when it was a pure assumption, was a motive which could be safely appealed to, to secure responsibility.

In modern communities these motives have lost their primitive strength, and may be said to be at their weakest in modern democratic communities. Accordingly, in the self-government of such communities, we usually see a variety of motives appealed to in the hope that some may prove efficacious. But these always include the constant motives above referred to, *i. e.*, the necessity of support; the desire for power; the dread of "censure" or opinion, or of punishment; and the love of approval, rank, honor, and reward. Without abandoning the oath of office, which is still admin-

istered to all who will take it, we add, in case of many offices, a pecuniary bond, the penalty of which appeals to the dislike of pecuniary loss; we assure the agent's support, during the performance of the duties of the office, by a salary, or fees, and make the tenure of it sufficiently long at least to induce the incumbent to accept it; encourage his fidelity with the hope of advancement, and reward it with promotion, and often in old age and disability with a pension, and in the case of failure or wrong-doing attach the penalties of summary removal or removal by impeachment or other legal means. For the religious bond and that of blood, our substitute is the moral, social, and patriotic bond, which is in some cases, and at some times, weaker, at others stronger, but which cannot compare in constant strength with some of the others just mentioned. Socialists, it may be observed, do not agree to this. They hold that responsibility for the operation of the new sort of government they propose, whose main function will be to correct the errors introduced into human society by the nature of man, can be secured through the ordinary operation of moral, social, and patriotic motives; that is,

through what is called sympathy. One objection to this solution of the matter, as already remarked, is that, as far as our observation and knowledge goes, antipathy at times is apt to be quite as powerful a force as sympathy.

I think, therefore, that a fair statement of the case, so far as it concerns free government, is that to secure responsibility in office we appeal to all the motives which can presumably come to our aid, but primarily to hope and fear of advantage or detriment of some kind. Among the former are emoluments, office, promotion, pensions, the good opinion of neighbors and friends, and, in exceptional cases, distinction and fame; among the latter are pecuniary loss, loss of reputation, disgrace, and deprivation of office. But to these are added the whole force, whatever it may be, of the obligations of religion and morality, of nationality, of patriotism, so far as we can make use of them.

I have said very little about economic law, because the mere mention of it nowadays seems to excite indignation; but people who are actually engaged in government always have it forced upon their attention. What we call the greed for office is closely connected with the

one great economic fact which can never be evaded—that to live, man must eat. Whatever other motive man calls in to aid him in getting political work done, the most authoritative writers, no less than the common experience of mankind, enforce the conclusion that means of daily support sufficient to insure the continuance of life cannot be overlooked.

Responsibility may be lodged, in theory, in certain hands, in fact, in other hands. The person made responsible for power intrusted to him may be one person, or responsibility may be devolved upon a few persons, or upon a large number of persons, and *vice versa*. It may be of different species or varieties. It may act through different motives. Whether or no these finally all come under the heads of fear and hope, even fear and hope act in an infinite number of different ways. In the most primitive forms of government, fear of life and limb is the motive which most readily suggests itself; this fact it is which is at the bottom of Montesquieu's generalization that the principle of despotism is fear. Political responsibility through fear of death is always highly attractive to tyrants, and is still resorted to wherever

the traditions of tyranny survive. In Russia to-day, a general engaged in war may find his life staked for him by the government on the result; a hundred years ago the idea of death as a legitimate and usual form of political responsibility was by no means unfamiliar. That ordinary official responsibility should take this form is to us a grotesque idea; but in France during the Revolution an orator is mentioned by Mr. Lowell as having made a speech in favor of ministerial responsibility, of which the conclusion was, "and by responsibility I mean death." In arbitrary governments failure in office is readily confounded with treason; to substitute for death exile and confiscation is an act of leniency. In highly civilized governments, although theoretically punishment by deprivation of office is relied on to enforce the responsibility of the executive, it is rarely resorted to, partly because it is cumbrous, and partly because a far more delicate form of responsibility has been found effective—that of "censure." The desire for good-will and approval often combines with the hope of continuance in office.

A curious feature of political responsibility

is that it continually tends to shift its *situs*, to disappear in one place and reappear in another; and this is a necessary consequence of the fact that in any community, however apparently stable or carefully designed the government, new centres of political power are always (in the inevitable process of social change) in process of development. The best-known illustration of this is found in England. Down to comparatively recent times English ministers were responsible to the Crown, very much as ministers are to-day in Germany. As they were appointed by the Crown, and were removable by the Crown, there seemed no alternative. But forty years ago it was pointed out by Bagehot that they had become really responsible to the party majority for the time being in the House of Commons, and had become very like a committee of the House of Commons. The responsibility to the Crown had become nominal, and the centre of power had changed. Unsuspected for a long time, this had become a constitutional fact. Down to 1832, owing to the condition of the electorate, the House of Commons was a feeble body in comparison with the Crown, but when the powerful and rich middle class were

admitted to the suffrage their representatives encroached upon the powers of the Crown by compelling the ministry to become answerable to them. But, if you will examine Mr. Lowell's interesting study of the whole subject, you will see that a further change seems to be taking place now, by which ministers are becoming more or less directly responsible to the *electorate* so that they are disposed to require as authority for new measures a democratic mandate. The principle of responsibility remains; if they fail, they go out of office.

All modern writers on government were until recently agreed that what made popular government possible in the large free states of the modern world was the principle of representation; that direct democracy over enormous areas was impossible. Representation of popular bodies is based on responsibility. "Responsibility to the People" is its essence. But representation is only a form of delegation adapted to free institutions; the delegation of power under some species of responsibility for its exercise is as old as the world. When a district elects a representative to Congress for two years, it does, through the machinery of the

ballot, something which, at this point, resembles what the Emperor of Russia does when he sends an agent to govern a province. It delegates power to be executed at a distance. In the one case power is delegated by a single person; in the other by an electorate, but in either case it is a delegation of power to be used at a distance by an agent who is to answer for what he has done. There is a further difference—that the representative is elected for a definite time—but this is not essential. He might be elected during good behavior, and the contrivance now introduced for getting rid of representatives unsatisfactory to their constituents, called the Recall, is a popular device for perfecting responsibility to the source of power. To the Emperor it is not a device. He recalls his agent by inherited right.

The operation, then, of the representative system is founded on the old principle of delegation and responsibility. When we say that a member of Congress is responsible to his constituents, we mean that he must go back and account to them for what he has done, in which case they may re-elect him, select him for some higher office, or pass him over.

It was owing to our theory of responsibility that the old executive right of “proroguing” the legislature was abandoned in this country. If Congress is responsible to the People, the executive would usurp their prerogative in proroguing it. A popular prorogation could only be effected by a vote of the people themselves and for other reasons was not thought advisable. The recall of a legislator would be a prorogation of a single representative by his electors; and might be applied to the whole body at once, in which case it would be a prorogation by the People instead of by the Crown.

Perhaps a clearer view of artificial political responsibility may be obtained by contrasting it with the ancillary system which is always at its right hand in every civilized government—that of legal responsibility. The civil and criminal responsibility of the citizen or subject in a court of law for his acts and omissions rests upon principles analogous to the responsibility in the political field of those intrusted with power for the discharge of their political task. One of the simplest and earliest forms of legal responsibility is simple punishment for crime, and this may take every form of which punish-

ment is capable; the crudest physical tortures and the extreme agony inflicted through superstitious terror are equally utilized by primitive law. At the other extreme we have in our age the most delicate skill and enlightened zeal devoted, not to punishment, but to the transformation of the potential criminal into what we call a responsible citizen, a process the most humane known to civilization, by which we not merely make use of, but actually create, responsibility in the mind and soul of man. Civil responsibility before the law, in early times, taking generally the crude form of pecuniary loss, advances to a much higher level in combining with this the prevention of wrong; but preventive justice is itself based on a summary responsibility to the courts—that responsibility of which we have heard so much of late, and without which the administration of justice would be a hollow mockery. It is through political responsibility that this legal responsibility is made possible. The political agency which makes it possible is courts of justice. It is the courts which are responsible for the administration of justice, and whether this responsibility is discharged honestly and efficiently depends

entirely on the means taken by the political head—king, emperor, parliament, or sovereign people—to contrive a sound system of judicial responsibility.

Responsibility in office is merely one illustration of the general principle of responsibility extending through the whole body politic, and on its nature and operation light may be thrown from almost any side. One of the best and most common illustrations is that afforded by military discipline. Responsibility here means primitive unquestioning obedience. As already mentioned, governments have been from the earliest times always able to obtain a constant supply of troops and officers, to hold them absolutely accountable for disobedience of orders, partly through the dread of punishment, partly through the hope of reward, partly through the mere guarantee of the means of subsistence. This is a good illustration of the principle, because it shows at the same time the foundation on which the principle rests, the extraordinary readiness of man to be taught and trained for use by the state. It used to be thought that the only way to secure a constant supply of troops was to pander to their worst passions,

and give them through booty, sack, and ransom the means of gratifying these. The maxim, "The soldier must have his reward," said to have been Tilly's answer when begged for some show of clemency after the three days' sack of Magdeburg, has been in our time abandoned; a higher and more humane system of responsibility has been established. The modern officer's lot is in the main very dull and monotonous; he and the soldiers under him submit to drill and drudgery, which to a civilian seems odious, with the readiness of a policeman. To get their task performed by either, we cease to appeal to base motives and appetites, and get the work better done.

The fire service is even a still more remarkable instance. Those who enlist in this service do so for scanty pay, and the ordinary performance of their duty involves constant exposure to death, and possible injuries even worse than death. But paid firemen and their officers are willing to assume the responsibility for what in any one else would be heroic self-sacrifice for slight reward, and submit to a rigorous and almost military discipline. In this case the motive among others appealed to seems to be

in part a very human and universal one—the love of excitement; and in part a very noble one—the desire to go to the help of a fellow-creature in distress and danger.

Party responsibility is a *quasi* corporate responsibility in the whole party, which operates by depriving its managers of power, *i. e.*, office, when they no longer have the confidence and support of the electorate. This sort of responsibility has played a most important part in the history of free government, as it is a direct responsibility to the electorate. It was through party responsibility that the Federalists were driven out by the Republicans, and the Whigs by the Democrats, and these in turn by the present Republican party. At present we often seem to be living in a country in which there is no national party responsibility, there being only one party; the fact is constantly deplored by the press for very good reason. A party is a political combination for the attainment of definite ends. Unless there is another party with a reasonable hope of persuading the electorate of the utility of an opposed policy, the party in possession may remain in power so long as to make it difficult for it ever to be dis-

lodged. Even under the Cæsars there was a sort of opposition, but it was not the opposition of a party; the party in power had ceased to be responsible because it could not be turned out. Any one who wishes to see what happens when, in a country once free, there is no longer a struggle between two parties for the possession of power, should read Gaston Boissier's "*l'Opposition sous les Césars*"; the author had seen the same thing in his own day; having been a subject of the third Napoleon.

Without taking into view party responsibility, what is meant by artificial political responsibility is, as already explained, the use of motive in those intrusted with power to do the will of the political head, so as to make them answerable. To provide for it in a given case, it is necessary to know all the factors in the problem. It does not work, any more than any other political force, in a moral vacuum. The great difficulty which all governments have had in dealing successfully with corporations is a by-word. Corporations are not office-holders, but creatures of the state; they are vested by the state with a part of its power for certain ends. A railroad or an industrial corporation is not very like a

church, but its power has the same potentiality of growth; and consequently the state makes it responsible in a variety of ways; it may forfeit its charter, its officers may be fined and imprisoned; its discharge of its functions may be supervised by the state; it may be broken up into smaller corporations; in addition to all this, there is the ordinary legal responsibility for damage and wrong. The path of history is strewn with wrecks of such bodies which, in their struggle to become unaccountable, have been destroyed by the state. Combinations of a dangerous character may not be corporations at all; whatever form they take, the struggle is, on the one hand, to assert a supremacy above the state; on the other, to establish some sort of responsibility. A curious instance in our own time is the struggle between the state and the trade unions. The essence of these unions is that they are unincorporated. Their members are under a theoretic responsibility, for instance, to the sheriff and his *posse*; this is, however, in this country, often of little value, as the body of citizens may easily sympathize with the adherents of the union. The result was at first a system of violence and intimidation by means

of which unions were able to terrorize whole counties and states and intimidate those out of work from taking the employment given up by their fellow-workmen.

Thirty, and even twenty, years ago the labor problem was in great measure a problem of irresponsible violence, which produced temporary anarchy at one time in Pennsylvania and at another in Illinois. Strikes produced it, but no one seemed responsible for it. Irresponsibility enabled the violent among the strikers to maim, beat, and frighten their reluctant and peaceable fellows away from their work. What solved the difficulty was an application by the courts to those disputes of a principle of responsibility which made violence impossible. The injunction was not a new remedy, but it had seldom or never been applied before in this class of cases. But when sympathy with strikes paralyzed the local executive, responsibility of this other sort was imposed by the courts by the means of preventive justice. The practice struck people as novel and surprising because it was applied on a great scale, but the method of prevention, as a means of anticipating violence and irreparable injury, was centuries old. The novelty lay in

the circumstances. The rage and fury produced by "government by injunction" was exactly measured by the binding force of the responsibility fastened upon those contemplating intimidation and violence. This responsibility was responsibility to the courts, and it was enforced, as it always has been, by summary arrests, fine, and imprisonment for contempt of process. In this way for some years now the courts have enforced a responsibility which could not be enforced in any other way, and comparative order has reigned in strikes, and boycotting and picketing have been stopped, where formerly for the time being the mob seemed destined to have undisputed sway. The unanimous decision of the Supreme Court in the Debs case is the landmark in this chapter of the great struggle between labor and capital, and if to-day we listen with equanimity to the perpetually recurring threats of violence which accompany every strike, it is because the courts have found a way through the writ of injunction of paralyzing violence and outrage, and preserving order. Take away the power to enjoin and to make decrees respected and you will return at once to the state of affairs which prevailed during the

Pittsburgh riots and the anarchy in Chicago. Responsibility of this kind leaders who gain in power through irresponsibility do not like. Messrs. Gompers, Morrison, and Mitchell resent responsibility here just as, in another field, the Emperor of Germany resents it. They prefer arbitrary power. The courts have in this case come to the rescue of the weakness of the executive and legislature. The sort of responsibility which was obviously needed was the responsibility of a corporation. If the legislature had compelled the unions to incorporate themselves—if they were to do so to-morrow—the treasurer and officers and funds of the union would be held legally responsible, and injunctions and judgments would shock no one.

Paralyze this power to prevent violence and damage to property and business and you would at once restore the irresponsibility from which the injunctions have saved us. Perceiving this, those who dislike injunctions more than they do violence have resorted to the ingenious proposal that punishment of violation of injunctions shall be by jury trial, a mode of enforcing judicial decrees never before resorted to because it interposes a delay through which

the mob, the conductor of the boycott, or the picket may accomplish its object while the right of the court to prevent it is being argued. The whole history of these labor injunctions is the history of an attempt on the part of a class to exempt itself from ordinary responsibility to law and the community, and of the successful adaptation by the legal branch of government of a means of enforcing the same responsibility.<sup>1</sup>

The principle of responsibility, then, pervades not only the whole body politic, but all human affairs, private as well as public. It is that without which no club can be managed, no ship sailed, no company drilled, no family be kept together, no church maintain an organization, and finally no state exist. It inheres in the structure and framework of the government of a state; and there it is used as the means by which those who enjoy the power of the state and are vested with its sovereignty, distribute this power among their agents, judicial, legislative, and executive, and artificially secure the

<sup>1</sup> It is hardly necessary to dwell upon the point that the result—the establishment of the injunction as an ordinary remedy in labor disputes—is a highly beneficial result for labor; for the alternative is always anarchy, in which both sides employ force, and the more powerful, that is the better organized, the more skilful, and the richer, carries the day.

performance of their duties. This artificial political responsibility is totally different from custom and habit; though it may make use of them, there is no reason why it should be confounded with them.

The operation of responsibility on human beings can best be understood by looking into what happens when it is wholly removed. Le Bon, in his examination of the "Psychology of Crowds," writes, if I am not mistaken, under the influence of the error to which all writers on these subjects are continually exposed, of treating a crowd not as a general term for a gathering of individual human beings, but as a human being itself; he personifies a crowd. Of the truth of the facts which he observes about it, however, there is no doubt, and the first of these is that, as compared with the individuals who compose it, it is destitute of responsibility; it easily becomes a mob and then acts like a wild beast, and will murder, plunder, and burn when the persons who compose it would ordinarily do none of these things. But he gives no explanation of these curious facts, which have been recognized for centuries, though not before, perhaps, so clearly put. The reason is fur-

nished by the fact that its numbers take away or greatly diminish the force of the motives which lead individuals to behave, as we say, in a responsible manner. Not only is the burning, murdering, and plundering done collectively, so that each one can say "My part in it is very slight" and "Had I not been there the result would have been the same"; but where a thousand persons take part in an outrage the ordinary legal responsibility is wanting. Since they can hardly all be punished, the probability is that no one will be; hence all the inhibitive forces which make man a responsible agent are impaired, and the collective impulse to do whatever is suggested greatly inflamed. Even the ordinary risk of censure—the fear of the loss of the good opinion of neighbors—is hardly of any effect, because the mob is made up of many neighbors. When the sympathies of the dominant portion of the community are on the side of the violence or outrage, responsibility or the risk of being held accountable in the forum of either law or morals is practically non-existent, and it is on this account that history is full of religious and race massacres, and lynchings such as we tolerate. The horrors of a mutiny on shipboard

come from the sudden removal of individual responsibility. Make the crowd a holiday procession, escorted by a few policemen, and it behaves like an ordinary responsible individual; each member of it is still actually answerable morally, socially, and legally. Let this same procession meet another against which it has a race or a religious passion and the policemen be partisans on both sides: responsibility vanishes, and the very same individuals who were before peaceable and quiet become riotous and even murderous. The ancients understood this, but they did not well understand its cause. Hamilton put it in an epigram by saying that if every Athenian had been a Socrates, the Athenian Assembly would still have been a mob.

*LECTURE III*

THE DEMOCRATIC MISTAKE



## THE DEMOCRATIC MISTAKE

So far as we have gone, I believe all the great modern writers on the actual operation of government support the principle of responsibility by implication at least. But there has been the widest diversity as to its true application.

This diversity, I think, has come in great part from an intellectual tendency which is the curse of all true inquiry into practical matters. When responsibility to the people was first heard of as a cardinal principle of government, it was — introduced, as explained by Mill, to answer the questions: How shall abuses of authority be prevented? How shall we make it certain that the greatest happiness of the greatest number, or the general welfare, shall be steadily kept in view by those who are intrusted with the work of government? There is only one way—by — making them responsible to the body whose interest is at all times the interest of the whole community, *i. e.*, the body of the community itself. It followed from this that to insure re-

sponsibility in the government, its agents must be responsible *to the people*. The electorate must be sufficiently large to secure this. The political philosophy of Bentham and of the democracy of Jefferson may all be summed up in this. The universal suffrage of to-day is only an application of it. It is all founded on a theory of responsibility, sound enough in itself, but hitherto used, if I am not much mistaken, in an erroneous way by its most enthusiastic supporters.

Speculation is always ready to stop at a general term or phrase and misuse the idea underlying it. Responsibility to the body of the people through the ballot is a general conception or term like liberty or equality. But it immediately became in the minds of the early advocates of democracy in this country something quite different; and if the fantastic speculations of Mr. Bryan about it to-day puzzle and amaze us, it must be said in his defence that he has done little more than caricature the speculations on this subject of an earlier day. Those who kept their heads when this shibboleth of democracy first came into vogue were the Federalists, and it is well known that they thought their opponents crazy, or nearly so.

The Jeffersonian method of employing responsibility we know all about, for it has been gradually developed for a hundred years and is now flourishing in great perfection. It may be summed up in this way: All abuses of power are cured by making him who has the power responsible to the people, *i. e.*, to a popular vote. This is because responsibility means always responsibility through the ballot. As every official tends to enlarge his own powers, he must be made elective and, to prevent his enlarging them, responsibility through elections must be made as frequent as possible. The president or governor must have a short term. Legislatures must be annual, because "when annual elections end, tyranny begins"; judges must be made elective officers for comparatively short terms; a long term weakens responsibility and will make even a judge a tyrant.<sup>1</sup> The idea is one of universal application. If you wish a really good government, you must make the term of every official—selectman, hog-reeve, tree-warden, governor, and all—one year. Then, if the people are satisfied, they can give him another, but he

<sup>1</sup> In Oklahoma a Supreme Court judge holds office for eight years.

must be answerable at the end of one year through the ballot to the body which is the enemy of tyrants. Why a year was taken, why a month or a week was not thought well of for some offices, is not clear. Nor was the theory ever applied in its full perfection to the judiciary; for continuity's sake in the administration of justice judges must remain on the bench a few years. In New York the theorists went as far as they dared in making the judiciary elective for a comparatively short term, and they were followed generally. In Massachusetts, and a few other States, the old judicial tenure was saved; throughout the rest of the body politic the panacea of annual elections was thoroughly applied.

The difficulty with the whole system was that, while founded on a perfectly correct idea, the deductions were from the idea and not from the facts of life from which the conception was generalized. Apply analysis to responsibility in the actual operation of government, and it appears clear that responsibility means answerability by some one to some one, for something, by certain means. If the means proposed are a popular annual election, before knowing whether these

means can be successfully resorted to to make, let us say, a judge accountable to the community for the discharge of his duties, we must ask what the duties are, what the tenure required for their performance is, how he will get his nomination, whether the body of voters can judge of his performance of his duties, etc., etc. If the question is as to a legislator, the answer will not necessarily be the same; still less if it is as to a governor or sheriff. In other words, the way to make a public servant really responsible must depend, not on making his office elective and for a short term, but on all the circumstances of the case. Universal suffrage may provide the means; again it may not. I have ventured to call the opposite view, that responsibility is to be secured by popular election at short intervals, the democratic mistake. I might, without danger of extravagance, have called it the democratic delusion.

The first question in the contrived structure of any government is how to make use of the principle of political responsibility so as to get the work of government effectively done. When the community is small and the sovereign powers are concentrated in the hands of one person, the

solution seems comparatively easy. Is a tax necessary? He has it collected. Is a war to be carried on? He raises the army and heads it. Is justice to be administered? He does it himself or appoints judges to do it. All the powers of the state are vested in him; all agents are responsible to him because they are removable at will by him. But in a modern popular government, where the powers of the state are vested in a vast number of people, the problem is quite a different one. The community, or the electorate within it, can practically do nothing but vote, *i. e.*, select for office this or that man, and decide negatively or affirmatively on this or that legal or constitutional provision. Their highest function is to adopt or reject a constitution. As we have seen, since primitive sovereignty was generally personal when popular government was introduced in modern states, it was inevitable that the *principle* of responsibility to the new sovereign through a direct vote should have been adopted as the foundation of popular government. There was no doubt in any one's mind—even in minds as opposite as those of Jefferson and Bentham—that the only means of preventing abuses of power and secur-

ing the welfare of the community was through responsibility to the community; the corollary, that the most effective way of enforcing this responsibility was through sending representatives to prevent and do away with abuses, and keeping those representatives responsible through elections, seemed to follow naturally. This, as has already been said, is the view of responsibility put forward by the democratic writers of a century ago. Their heirs, however, proceeded to develop the idea in a novel way; not content with the logical step of widening the basis of sovereign power, then in the hands of property owners, by introducing universal suffrage, they proceeded to secure responsibility by introducing the elective principle into all offices of government wherever practicable, and, to make doubly sure, by making the tenure as short as possible.

Not content even with this, they went farther, and, as often happens, they wrenched a misunderstood principle from its original purpose and misapplied it in a new field. If when annual elections ended tyranny began, there was not only a connection between short elective terms and responsibility, but the cure for the old difficulty,

that any official who stayed in office tended to become despotic, was simple. Short terms were just as good for executive clerks as for legislators; in other words, as the key to good legislation was annual election, so the key to good administration in the clerical and administrative service, where the tenure was by appointment, was *rotation in office*. In another generation, rotation in office had substituted for true political responsibility that baleful species of answerability which means nothing but favor and patronage, and was now stoutly defended as an essential principle in a democratic state.

At this point, having stated what I believe the democratic mistake to be, it seems best, for the sake of clearness, to state more explicitly what I believe to be the true—and opposed—theory. I believe that the only effective method of securing *responsibility to the people* (by which is meant in most cases the faithful and efficient discharge of official duty as prescribed by law) is *secure tenure* (involving necessarily infrequent elections), and that the responsibility actually secured by the system of frequent elections and consequent insecure tenure is responsibility less to the people than to an arbitrary and irrespon-

sible private employer or employers, at the head of what is known as the Machine; that through it the boss or bosses of the machine become the real master or masters of the so-called servant of the state, clinching his allegiance by means of the salary of an office controlled through the party nomination and party vote, and exacting in return for such security implicit obedience, not to the state but to themselves.

This view of the subject is founded on a very simple fact—the close resemblance between public and private business. It is at this point that the analogy between Man and the State is most plain. How is responsibility to the owners for the management of a private business secured? As to all those who do the actual work, by making a faithful discharge of the duty of the particular office—treasurer, secretary, head of department—*mean* a tenure during good behavior, promotion, often provision for old age, and security against arbitrary removal, except so far as change of circumstances makes this impossible. In every private business, so far as well managed, this has for untold ages been the system; and moreover it is the only system known to man by which fidelity to the ends of the busi-

ness, that is, responsibility, is secured. Nobody in private business ever dreams of securing it in any other way, and any one who should propose to secure it by any other means would not be listened to.

Now, there is no difference between the ordinary every-day business of the government, whether monarchy, aristocracy, or democracy, and a private business *in this respect*. The end in view is public, but the function itself is not on that account of a different nature. An officer of customs or tax-collector collects a tax; a railroad conductor collects fares; a freight agent, freight; the bookkeeper of a merchant, bills; but the function is the same—that of collecting money for his principal. A postmaster distributes the mail; an express company's agent distributes parcels. The character of the work is not different in the two cases. Intelligence is transmitted by telegraph or telephone. In one country it is a private function; in another it is a function of government. Here the thing done is precisely the same. Are the means of securing fidelity to the company in one case, to the sovereign in the other, to be different?

It is very true that when we come to the

*managers* of the business, the directors of a railway or bank, or any other business too large and varied to be managed except by a large body of men, the elective principle is applied, but it is applied here for exactly the same reason that it is applied in public affairs, and on exactly the principle laid down by Bentham—that the general welfare of the business may be watched and guarded by the *only class which can be relied upon not to have interests opposed to this general welfare—i. e., owners or stockholders.*

And so in public affairs, responsibility to *the people* must be secured—in the case of the legislature, in the case of constitutional conventions, in the case of constitutional amendments, by some sort of a vote, representative or direct; but this does not relate to the transaction of ordinary public business, but to the determination of public policy, to changes in it, to modifications in the sphere of government, etc. In any discussion of government by design, this is the line which separates the questions which must be, and those which cannot be, successfully determined by *suffrage*. I shall go into this from another point of view in another lecture.

Fortunately for us, the structure and framework of the federal government had been devised mainly under the influence of a true theory of responsibility, and the success which upon the whole has attended the work is due to this. It may be worth while to stop here, before considering the point further, and glance at the scheme of the federal constitution, the great exemplar of modern written constitutions in the English-speaking world.

The *Federalist* is sometimes thoughtlessly treated as an argument by pronounced partisans in favor of a party measure. But it is in fact throughout occupied with discussing the conformity of the proposed constitution to true republican principles, as applicable to the American community of that day for the purpose of forming a new government; and it is here that we have brought into view that theory of the operation of government through human motive which, as I believe, must furnish, and has always furnished, the basis of all successful government. The reason why it becomes so much plainer in the federal than in the state constitutions is that the former is not, like them, in part an historical growth, but came into being

a perfected contrivance, in answer to the question then supposed to be unsolved: Are human beings capable of establishing good government by reflection and choice? The framers also were exempted from the discussion of that most difficult of all questions—the abstract sphere and province of government. For them the sphere of government was merely such powers as were required from the States to enable them to form an energetic and stable federal government, while the great mass of sovereignty was left where they found it—in the States themselves.

Much has been said of recent years about the very slight prevision which the framers of the constitution had of the vast changes that were to transform the fabric of social existence in the United States; and it seems to be thought in a good many quarters that their scheme has broken down. The most favorable view generally expressed is that wonders were done considering how little they had to go by in the way of experience. The best way to gauge their work I have found to be to take the constitution as they left it, compare their scheme as far as possible with the actual result, and thus judge of their theory.

To give a very brief survey, half of the *Federalist* is taken up with showing that to have vigor enough to maintain itself the new constitution must be a government acting directly upon the individual citizen, and that a federation of States such as had hitherto existed would not answer. To analyze this into terms of responsibility, the first necessity of every government is means of defence. The States had hitherto been bound to furnish men and money, but they were not politically or legally responsible for not doing it. Except through violence or war, they could not as agents of the confederation be made to do it. There was an obligation, but they were not answerable under the older constitution for the discharge of it. The remedy was to clothe the citizen directly with the legal responsibility to the central government in these respects. Had this view not prevailed, had not the Union as we know it been established, the right of secession must have existed. This change, which introduced the ordinary responsibility before the law, instead of the irresponsibility of sovereign states, was what furnished the legal basis for the appeal to save the Union two generations later. The *Federalist* never

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became in the days of Calhoun and his followers a book of authority in the South. What the authors say about the irresponsible character of the old confederacy and the impotence of the old central government in the face of State rights makes the explanation of this very simple. The device resorted to made *federated States responsible to the People of the new Republic.*

The rest of the *Federalist* is mainly occupied with an explanation of the means taken by the framers of the constitution to make effective the responsibility of the Legislature, the Executive, and the Judiciary of the new government for the functions which they were to discharge, partly through the separation of the powers which is designed to prevent the usurpation of the functions of one department by another, and partly through either election or appointment. Here again, although the distinction is not made in so many words, a sharp line is drawn between those cases in which responsibility is necessarily secured through election, *i. e.*, where there is no other way, and those in which it is only naturally and effectively secured by other means. There is no way under popular government of providing a legislature for a large community, except

through representation, which means election of some sort. There is no way of providing an executive, independent of the legislature, except through popular election. It was accordingly provided that the House of Representatives should be made up of representatives directly elected by the people; to balance its power, the Senate was to be made up of representatives of the States. But when the framers of the Constitution came to the judicial power, they made the office appointive, and the tenure for life, unless terminated by a proceeding in itself judicial. As to the executive, they made one mistake, which was a natural one—that of not foreseeing that an electoral college, meeting by States, would degenerate into a body of political dummies. That mistake arose from a simple cause: they had not the means of foreseeing a fact tolerably familiar to us, that whenever you lodge the nominating power in an elective body, whether a convention, a legislature, or a college got together *ad hoc*, you merely tend to throw the actual source of nomination into the grasp of the constituents of the elective body. This mistake has had, however, less influence than might have been expected. In the main, the Presi-

dents of the United States have been representative men, and there have been among them, to say the least, in proportion to the whole number and duration of tenure, as many men of conspicuous ability and distinction and as few distinctly mischievous rulers as any other government can show. Generally they have been responsible; that is, they have discharged the duties of their office in the way intended by the Constitution, and, when they have not done so, their responsibility has been enforced by the means provided in the Constitution; that is, by those very ingenious checks and balances designed by the convention and explained in the *Federalist*. It is an interesting fact, corroborative, I think, of much that I have said, that the chief complaint to-day heard about the executive office is that the *tenure* ought to be *longer than four years*, and *elections less frequent*.

When we come to the judicial power, we see the view of government which is founded on responsibility at its clearest. The object is to get a judiciary which will be incorrupt, competent, and absolutely independent of the legislature and of the executive. The appointment is given to the President and Senate, so that the pat-

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ronage may not absolutely vest in either; tenure is made during good behavior; and direct responsibility is enforced through impeachment. But the responsibility of a judge may be affected in other ways. The great blight upon the judicial power in the past had been its dependence upon one or both the other departments, through removal or control of the means of support. The danger of improper removal having been obviated by making the tenure practically for life, independence as to salary was secured through the provision that federal judges shall receive a compensation which shall not be diminished during their continuance in office. These provisions left the federal judges free to discharge their duty, punishable for not doing it.

Hamilton foresaw that the judiciary would have the power to declare unconstitutional laws void as in conflict with the fundamental law, but he also knew that this was a power which would never lead to judicial usurpation for the reason that the judiciary itself has no power except through the executive arm. This is another feature of judicial responsibility under our system which people seldom notice. Demagogues rant about the danger to liberty from

the courts. But, as Hamilton pointed out, it is the other departments which have the power of the purse and of the sword. The courts have no control in these fields; they have neither force nor will of their own, but merely judgment. It is the purely rational department. This is the reason why it has always been so difficult to make it independent and secure; it is also the reason why it does not, left to itself, usurp.

In the preceding centuries there had been no difficulty in making it subservient to the executive or the people. It had done their bidding only too well. It had condemned Socrates, it had committed thousands of judicial murders, it had stifled the press; but it had never been made by deliberate contrivance, through security of its tenure and support, at once independent and responsible solely for a good discharge of the judicial office. There is no more convincing demonstration than the chapters in the *Federalist* which relate to this subject. If any one doubts that the operation of a government depends upon a nice study of the play of human motive under the influence of constant causes, he should carefully study them. And if not satisfied *a priori* with the reasoning, let

him ask himself as to the result. The federal judiciary as a matter of fact has played for more than a century exactly the part assigned to it by the framers of the Constitution. It has been powerful by weight of reasoning, it has been independent in the exercise of power, and it has been uncorrupted. It has vindicated the Constitution, and been a wonderful proof of what human contrivance and forethought can do in directing the operation of government through the play of ordinary motive in such a way that it shall prove responsible to the people for the efficient performance of the work assigned to it.

Turn to the judiciary of the States and see what a contrast is presented! Taking from the early phrasemongers and theorists a false theory of responsibility—that it could only be obtained through frequent elections—the States have done their best to make the judiciary the football of politics. The effect of the elective system in those great centres of life where we should expect to find, and most need, the best courts is to throw the selection of judges into the hands of the controller of the local machine; *i.e.*, to make nominations depend upon his favor; in other words, to make it neces-

sary to gain and keep his favor. This is the end of independence and the beginning of a system of purchase. Responsibility is now in part responsibility to a secret power, and the amount of money paid for nominations becomes a matter of newspaper discussion. Favors must be paid for by favors, and in such a system there can never be the assurance of purity nor independence nor ability. The leaders of the bar cannot get onto the bench.<sup>1</sup>

In all this there is nothing novel; the facts have been known and admitted for a long time; the deplorable thing is that it is not yet perceived that the whole system is the ripe fruit of a false theory of democracy, which cannot be got rid of by any means short of its abandonment. Here you have side by side the two systems, one, the operation of which has been demonstrated in two countries, England and the United States, and several of our older States; the other, frequently denounced by the press of the commercial capital of the country, in a State which contains something like a tenth of the popula-

<sup>1</sup> In our time the absence of names of leaders of the bar, in the city of New York, of the first rank, who have gone onto the Supreme bench, or that of the Court of Appeals, has often been noticed.

tion of the whole country. The only reply that I have ever heard is that the elective system works well "in the country." What this really means is that its evil effects are by no means so evident in the country, where the interests at stake are usually not so great. But what is wanted is a judiciary which is as nearly perfect as possible in the great cities. Our population and wealth have ceased to be rural. In Massachusetts and a few other States, judicial systems substantially the same as that of the United States have been preserved; in those there is no such scandal, and no such singular comparison to be made with the federal judiciary.

In 1902 a representative of the Standard Oil Company wrote to Senator Foraker reminding him of Judge Burket's candidacy for re-election to the Supreme Court bench of Ohio, urging his re-election strongly on the ground of "his eminent qualifications and great integrity," and expressing the hope that he (Senator Foraker) would aid his re-election. There could not be a better illustration of the way the elective machinery for judges works to degrade the judiciary. The idea that a great corporation (and most of the wealth of the country is in the hands

of corporations), always in the courts as plaintiff or defendant, will spend the whole year in carefully looking after its own interests and then at election time stop and devote itself to securing impartial judges, responsible only to the people, is founded on a conception of human nature and ideas of government which are nonsensical. What they will do, as we all know, is to further the election of judges who are not likely to be adverse to them; and in such a case, however eminent and honest a judge may be, as he always knows in the long run who his supporters are, he will be made to feel that he owes his place in a measure to this very corporation. However excellent the man, there is an attempt to put him under the influence of improper motives. It is not only his integrity, but general confidence in his integrity, that is wanted; when the letter to Senator Foraker became public, this it was that made a scandal of it. The only possible means of doing away with this pitfall is the selection of judges by other than elective machinery and making their tenure secure.

The operation of this false theory of responsibility, which seeks to secure good government by short tenure and constant appeal to the elective

principle, is most clearly seen in the judicial system, but it exists everywhere. "When annual elections end tyranny begins" does not find an echo in our breasts to-day, because we have learned by bitter experience that frequent elections are no safeguard against bossdom. The movement for biennial elections which has spread over the United States in our time would never have gained such headway, or gone into operation in so many States, had it not been found that the shortness of the term of the legislature was of no avail in this respect. Can anything be conceived which will more certainly produce irresponsible legislatures in a community like ours than a short term of office? The shortness of the term makes the tenure insecure, while the amount of work required is very considerable; men of the first rank in character or position cannot afford to spend half the year in such routine work as that of the State legislatures. Forty years ago it was argued that the whole difficulty came from people being unwilling to go to the primaries and "attend to their political duties." Now, the work of the State legislatures being thoroughly satisfactory to nobody, the far saner view is taken that we may at

any rate cut it down in amount and expense by giving up the annual use of them. If an examination be made as to the amount of general legislation needed annually by such States as New York or Massachusetts, it will be found to be comparatively small. A large part of the ordinary work of the governor of New York has come to consist of vetoing bills plainly unconstitutional or otherwise improper. But in Massachusetts tyranny is still kept at bay by annual elections, and in New York, while we have a biennially elected Senate, we still have an annual legislature.

In New York, certainly, it is not generally believed that increase of legislation means increased good government. In 1870 the legislature turned out two bulky volumes of statutes, nearly two thousand four hundred pages in all. The downfall of Tweed and the improvement of the membership of the legislature followed, and in 1879 they produced a modest volume of some seven hundred pages. By 1908 the volumes were again swollen to the old dimensions. It is often forgotten that the law of supply and demand applies with peculiar force to legislation. The assemblage of the legislature is vir-

tually the establishment of a statute factory open to all comers; it fosters legislation of itself. In Mississippi, where there are no enormous cities, they only allow the legislature to meet once in four years, with the exception of a special session of thirty days, which cannot be lengthened except by the governor. At such special sessions none but appropriation and revenue bills can be considered, or extraordinary matters called to the attention of the legislature by the governor. If when annual elections end tyranny begins, tyranny would certainly seem to have taken root in Mississippi. Yet we hear no complaints of it, though these provisions have been in force for some twenty years.

Responsibility to the people by annual election sounded a hundred years ago to the Democratic theorists as if they had discovered a law in the moral world of the same sort of value as the law of gravitation in the physical. When stated it seemed to prove itself. The power of phrases and the ease with which they are used to influence political action was never better illustrated. Contarini Fleming, the youthful hero of Disraeli's novel, comes back from school to his father—a public man and political philos-

opher of a species that never dies—and complains to him bitterly that he is taught nothing but "words." His father, wishing to get at what is in his mind, asks him what he would be taught. "Ideas," he cries passionately. "My son," his father says, "few ideas are correct ones, and what are correct no one can ascertain; but with words we govern men."

To sum up what has been said: Bentham and Jefferson, both extraordinary men, gifted with a prophetic political insight, foresaw, one in England, the other in America, the reign of democracy, and pointed out the principle on which it must rest. But, like many other great men, the very clearness with which they saw one aspect of the subject blinded them to the fact that they did not see the whole of it. Hamilton, a genius of another sort, saw exactly what they failed to perceive. Two succeeding generations neglected what Hamilton saw, and blindly misapplied in every direction the principles of Bentham and Jefferson. In accomplishing its work the historical party which did this very nearly destroyed itself. In its effort to enforce responsibility through elective machinery it has paralyzed real responsibility in

every direction, and has, some people think, become incapable of either producing leaders or of holding its old opponent to that party responsibility which it once knew how to teach. Can it retrace its steps? Or, rather, can we retrace ours? For, at present, the delusion as to responsibility being attainable by the ballot alone seems to infect both parties almost equally.

*LECTURE IV*

PATRONAGE AND THE MACHINE



## PATRONAGE AND THE MACHINE

In the previous lectures I have endeavored to establish the following points with reference to popular government, such as that under which we live. *First*, that a popular government, though partly a growth, so far as its operation is arranged beforehand by human design, must be contrived upon some theory; *second*, that this theory must depend on the view we take both of the nature of man and of the nature of government; *third*, that with regard to the former the one point upon which there is a general agreement is that, for the satisfaction of certain wants, some of which are constant while others vary with surrounding circumstances, man is capable of imposing upon his fellows, and his fellows are willing to undertake an artificial species of responsibility acting through constant motives, which may be aided by, or, on the other hand, run counter to, what we call moral and religious responsibility,<sup>1</sup> and

<sup>1</sup> The buccaneers of the Spanish Main established among themselves for a time a species of anti-social order, enforced by a rigid

under which the officer or servant of the government becomes answerable for a political task; *fourth*, that side by side with, or rather within, this machinery of political responsibility exists the every-day legal responsibility of the citizen, or subject, for his acts and omissions, the task here being the administration of justice (one of the constant wants of man); *fifth*, that in what we call a republic, *i. e.*, a community living under common laws and a popular government within defined boundaries, this responsibility is ultimately founded on the idea of answerability to the people, or community as a whole, through the exercise of the suffrage; *sixth*, that, from the time of Jefferson down to our day, the mistake had been made, in our theory and practice, of assuming that, because the ultimate responsibility was to the people, therefore the way to secure responsibility in office must uniformly be through some sort of elective machinery; that not merely would the legislative and executive head be responsible to the people if elected by the people, but that this principle was equally true of every sheriff, as responsibility comprehending a *quasi* legal system of rewards and punishments—the object of the whole being plunder by means of piracy and rapine.

sessor, collector, or other subordinate; that not merely must legislators be elected, but that they must be elected as often as possible; finally, that, in exactly the same way, judges would not really be responsible for the proper discharge of their duty unless they too were all elected frequently; *seventh*, that, by a still further and curious misapplication of an idea in itself not erroneous, the monstrous conclusion was reached that a short tenure of office, as it sometimes produced greater responsibility when the office was elective, would also produce it when the tenure was by appointment.<sup>1</sup>

To trace all the consequences of this mistake would require a great deal of time, but what may be worth while is to point out some of its consequences in regard to the operation of the principle of responsibility; and, above all, the connection of the mistake with the creation of that contrivance within a contrivance which we know and justly dread as the great enemy in our day of individual freedom and character in

<sup>1</sup> Rotation in office, supposed to have been originally adopted in the states of antiquity in obedience to an analogy between the functions of government and the apparent rotation in its orbit of the sun, notwithstanding it had become a gross abuse, was stoutly defended down to a very recent period as vitally connected with the principle of responsibility.

government—the Machine—our incarnation of what might be called the ancient enemy of all good government—Patronage.

When the Constitution of the United States was framed, the modern system of nomination by regularly organized representative bodies was undreamed of. The suffrage was in the hands of property owners, a comparatively small class, and nominations were very much what we should now like to have them—free. There were no primaries, there were no town, county, district, state, or national conventions of nominating delegates. There were no “bosses” or office brokers. There was no great body of civil servants because there were no great federal or state fields of administration. It would have been a miraculously gifted vision which could have foreseen the change a hundred years was to produce. The story of that change—how the original freedom of nomination was strangled by the caucus, and this, to restore freedom, was supplanted by the convention system; how this latter system, originally intended to make nominations representative, became in the course of fifty years a means of throwing the control of nominations everywhere into the hands of

smaller and smaller numbers of people, until in New York, the greatest centre of population in the country, they now fall for years at a time into the hands of one man—the head of Tammany Hall; how in both parties the same causes produced the same effects, and the national machine was so perfected with the aid of the skeleton negro delegations from the South as to bring within potential practical politics a presidential convention, controlled from Washington by long-distance telephone—all this is familiar to us. It has produced a state of things generally recognized as highly dangerous to free institutions; it produces frequent revolts and continuous dissatisfaction and resentment. It was the cause of the movement for the Australian ballot, for independent nominations by petition, for the independent non-partisan movement in politics, which has long made the wealthiest and most populous State in the Union “doubtful”; and, finally, of the movement for the initiative, the referendum, the recall, and “direct primaries.”

The Machine, as it flourishes among us, although intrenched in party, is not party government, with what used to be called party

responsibility. That responsibility which, as I have already said, still exists in a highly developed form in England, was, as far as it went, a real, natural, extra-governmental responsibility, re-enforcing the contrived political responsibility upon which the actual operation of government necessarily rests. It grows naturally out of a wide division in public opinion as to the proper policy to be pursued by the government, and through it either party, having obtained possession of the government, is made accountable for misgovernment by being turned out of office. It was this sort of responsibility under which the Democratic party enjoyed its long lease of power before the war, and it was finally enforced by the Republican victory in 1860. It was this sort of responsibility under which the Republican party administered the government down to 1884, and which the victory of the Democrats under Cleveland in 1884 and 1892 enforced. In England party responsibility is enforced whenever the Crown is obliged by the electorate to dispense with the service of the ministry for the time being.

The machine, or organization, as, whenever it attains perfection, it is called by its adherents

and managers, is something utterly at war with this. The very introduction of such terms shows how little it has to do with public opinion or changes in it. The machine is an organization, outside of the government itself, consisting of a committee or committees, or congeries of committees, representative in theory, but partly self-perpetuating in fact, which exists in either party for the control of nominations and the allotment of offices, and by these means for the division of emoluments and profits. It consists of "working" politicians, mostly obscure men, who devote whatever time is necessary to politics, and are enabled to do it by their irresponsible but acknowledged control of offices and salaries and expenditures. Responsible to no one, either legally or politically, in ordinary times it wields the power of the party. It is controlled by leaders whose power is as notorious as its source is hidden. In States like New York, Pennsylvania, Massachusetts, and Ohio it has at its head a single man, or a very small number of men, unscrupulous, despotic, and secret. The machine, being a despotism of one or a few, cannot be managed democratically. The machine may be, as is generally the case with

Tammany Hall, very ignorant, as educated men esteem knowledge; or its power may be, if the electorate behind the machine is of a better sort, lodged in the hands of a man of position and education; but in any case its function is not to deal with matters of opinion and belief, but to maintain a highly disciplined organization, military in the blind obedience it exacts from legislative, executive, or other office-holders, in return for which it brings out the vote when required, the vote supplying the offices and salaries and money which pay the troops and officers and employees and camp followers. The head is responsible to no one, and may not even hold office; if he chooses to hold office, he is not responsible in office, because the same blind obedience which put him there may generally be relied on to keep him there in case he wishes to remain. It is needless to give illustrations. I asked the owner of a profitable private business, who was also an important officer of a leading State, which he found the more difficult occupation: He said at once, "Oh, my own business. In politics all there is to do is to obey orders."

"The tyranny of the majority," against which we used to be warned by critics of popular insti-

tutions, was the tyranny of a dead level of opinions, habits, beliefs, and aspirations, such as a general equality of condition might produce, and such as some writers thought it did produce fifty years ago in this country. But the tyranny of the machine is something far worse; it is the negation of all opinion, and the substitution for it of a political drill, with the object of the undisputed control of patronage, or, in other words, the offices, combined with immunity from all responsibility. It is tyranny come to life again in the very centre of free institutions. So far as it is effective, free thought and free action die.

If this view of the subject is correct, it is clear that the great democratic mistake of multiplying elections, shortening terms, and using the suffrage on every possible occasion as a decisive test has been the one thing predestined to promote the development of the machine. In the eyes of our theorists the people of the State of New York are more perfectly protected against abuse of power on the part of rulers than any other people in the world. They have an annual session for the lower house; their judges are elected, hold office for a definite term, and are consequently responsible to the people; elec-

tions of all sorts are frequent and fair. In fact, there probably is no other place in the world where, in the course of a year, one can vote for so many candidates. But in fact their government is parcelled out by a close corporation, or rather two close corporations, which, nominally opposed to each other, have frequently had in the past a complete understanding. By common consent the result is unsatisfactory and undesirable, and at long intervals, as at the present time, a revolution ousts one machine or the other. But not generally for long. When the popular passion subsides, and the popular Hercules who has swept out the Augean stable rests from his labors, or is elevated by his enemies into some position where he becomes harmless to them, the machine works again smoothly, the slate made up in secret is unanimously adopted by the prearranged convention, and the straight ticket is voted again.

We have apparently verified, in this state of things, the predictions of aristocratic critics of democracy, that the barbarians fitted to destroy our civilization would not come from outside, but would be produced from the inside.

As was said in the last lecture, the great puz-

zle of American politics at the present time is the apparent paralysis of the opposition.<sup>1</sup> Why is the destiny of the country dominated by one party, although there is probably, so far as can be judged from the press, just as much division of opinion as to political matters as there ever was? As in the case of any other great fact of contemporaneous history, there are no doubt many causes; but one of them at least seems connected with the error already adverted to. The Democratic party assumed originally a comparatively simple task—that of democratizing our institutions. To make suffrage universal, and make all offices possible elective, and to have elections frequent, required no great genius, but chiefly the comprehension of a simple contrivance, the extension of which they took to be a fundamental principle of popular government—by such means only could responsibility to the people be made effective. But all this was long ago accomplished, and it is now pretty clear that the principle is not fundamental—that the means supposed to be required by it really produce, not responsibility, but the ma-

<sup>1</sup> When these lectures were delivered, "Bryanism" showed as yet no sign of waning.

chine and irresponsibility. And, accordingly, to-day the Democratic party is little more than an organization for the control and delivery of votes. It cannot produce new ideas or get statesmen to lead it; its fundamental idea having been already discovered and expounded and applied and exhausted, there is nothing more to do. If it does not work as was expected, the party cannot abandon it and take some new one up. Consequently the followers of Jefferson are thrown into the arms of demagogues who tell them that there has been no mistake at all; that all that is needed is more democratization; as at first what was needed was democratization of the machinery for the operation of government, so now what is needed is democratization socially—the redistribution of wealth, the enforcement of equality of condition, the abolition of poverty; in fact, exactly that sort of socialism which political and economical doctrinaires have been preaching in France and Germany as the “next step.” In this way the American Democracy, historically not only the “least government,” but the States’ Rights party, has been led into its present ridiculous position of trying to outbid the demagogues of the party of cen-

tralization in the advocacy of every sort of Federal government interference with individual liberty and property, and espionage and confiscation of the goods of the rich, in the interest of a new "distribution" which will seem proper to the distributees. How an opposition party might be created was seen in the days of Tilden and Cleveland, who both, though originally sharing the Democratic delusion that responsibility to the people could only be enforced through elective machinery, came to perceive that the real result was to produce the machine, and that at that time the key to the irresponsible power of the machine was in its hold on the Federal civil service. Being men who could distinguish facts from phrases and ideas, they foresaw that the key to a new great democratic advance lay not in blindly injecting more suffrage into the body politic, but in doing what had been done in England, abolishing one of the worst forms of privilege known—patronage in this service. They took up the "merit" system, which was really the property of neither party, and so long as they were in control the Democratic party had leaders who were not tied blindly to the past. But they left no heirs, and

for twelve years the national Democratic party has been a machine worked for the benefit of a single man, who has fed his followers on the delusions and whims which are the legitimate products of a false theory of government. There could hardly be a more valuable illustration of the lasting and cohesive power of this curious kind of extra-political and irresponsible organization than that it has actually maintained a totally unsuccessful leader at the head of a once great historical party for twelve years, and found means to supply itself with the sinews of war against the better judgment of larger and larger numbers of those who nominally supported him.

Of course, when the machine is spoken of as an irresponsible body, what is meant is that its agents and members as well as itself are absolutely unknown to the Constitution and laws. No one connected with it is made answerable for anything that he does, to any organ of the government, and practically there may be said to be hardly any responsibility to public opinion or "censure," because the power of this incorporeal body is so great as to be above it. But within the organization all is entirely different.

Being an *imperium* in itself, the machinery of responsibility must be found in it, and it is easy to make out its nature. It is in one aspect the responsibility of obedience in return for nutrition—the most binding and primitive form of responsibility known to man. What the “leader,” the boss, the committeeman, really does for most of his followers is to provide them with meat and drink and clothes. Obey, and the machine will provide for you; disobey, and you will be left to yourself. But there is another tie in proper cases. Obey and you shall be given a career and honors. Do your work, whatever it may be, and the reward shall be honor and place. There is only one condition: you must be dumb and blind. The machine is a providence to its followers. There are even further ties. In many places, for instance, the machine is able to get for its supporters wages which are above the prevailing rate, to see that troublesome creditors are kept at bay, to look after its criminals when in trouble, and find bail for them. When we ask what is the power behind, we always find it is “the organization,” a creature not only with neither soul to be damned nor body to be punished, but without even legal identity or existence to be established.

The machine of a party not in control of the national offices is powerful; but its power is as nothing when compared with that of the machine in control throughout the country generally. In offices held by administrative appointment, rotation may come to a final end by civil-service reform and tenure during good behavior, when these are permanently applied to the whole administrative system, as they are in great measure now. But they are still in imperfect operation; and civil-service reform does not affect rotation in elective offices, the centre of most of the intrigue and favoritism which now prevails. Few people understand to what extent this system of rotation has been carried. In every State where the elective system has been generally applied to offices formerly non-elective, and where elections are very frequent and elective machinery complex, the system is carried out to a remarkable degree of perfection, and the vast body of candidates for local office is rotated into them and out of them, through its control of nominations, by the machine, so that by diligence and constant work the meanest laborer in the field may aspire to high place. This system, of course, involves the absence of responsibility to anybody but

the nominating power—to that power a tie of absolute submission. It must always be remembered that salaries, as well as the creation of offices, are in the hands of the legislature, and that the legislature is made up as far as is possible of creatures of the machine. Thirty-five years ago volunteers used to go to Albany to argue before committees in favor of or against proposals of legislation. Now those who wish to influence legislation have private interviews in private rooms with the quiet men who control the legislators. It is easy to see why this system tends to produce more and more offices, as it is by increasing the number of offices that the machine constantly increases its hold upon the party and through the party upon the government. We used to ask ourselves what the ideal state will be. The ideal state under machine government will be one in which every one who interests himself in politics may have the hope of filling, at any rate for a short time, some office, while in consequence all those who interest themselves in political work will have an interest in the constant increase of taxes; they will all be at the public table every day and the entire community will pay for the meal. The machine

ideal of democratic institutions is, in other words, the multiplication of offices and the dissipation of responsibility in them. The machine Utopia is entirely attainable.

The machine is the ripe fruit in a popular government, where there is an enormous amount of money to spend, of the primal curse of all governments of kings and aristocracies—Patronage.<sup>1</sup>

The machine not only enjoys irresponsible power itself, but through its control of nominations it tends to destroy all responsibility in

<sup>1</sup> Go back to the early part of the last century and you find in England, in the "rotten boroughs" and the control of places in the civil service, a corrupt system of patronage less secret, and consequently less effective. Favor or caprice were the grounds of appointment and made the tenure even of elective offices dependent on favor. It was through this system that the king was able to make the American war last for seven years, and all electoral reform was blocked until the reform bill of 1832. A political agent like Rigby bore a close resemblance to what we should call "an active organization man." So habituated had people become to it, it seemed to be an integral part of the government, and the Duke of Wellington asked pathetically, on finding that he could not withstand the tide of Parliamentary reform: "Then how is the King's government to be carried on?" When, later, it was for the first time proposed to abolish patronage in the civil service here, all the politicians who had made their way to power by aid of it protested that without patronage people would not perform their political duties. It proved extremely difficult to get anybody to believe that people went to the polls from any but interested motives.

office, the very principle, that is, on which all government rests. The office-holder becomes responsible to it, while nominally answerable in the quarter designed by the scheme of government. This we see every day in the legislature. The member is in theory answerable to his constituents. But he knows that in nine cases out of ten his constituents have nothing whatever to do with sending him to the legislature or keeping him there, except through voting for him or against him at the polls, and that the whole body of his party will vote for him if he gets the nomination of the machine. Knowing this, the temptation is almost overwhelming to become a henchman of the organization, which practically means making a bargain with the person who controls it to take orders from him while in the legislature. Instead of being the representative of a popular constituency, he is the agent of the machine, and his continued tenure of office depends on his fidelity to it. This gives the machine the absolute control of the party vote, and legislation is either blocked or permitted to go through by arrangement with the head of the machine. This is the system which has taken the place of the old-fashioned

lobbying, which could not outlive the individual independence of members. The lobbyist formerly had to approach members. He now deals with the patron of the members. During the Platt régime at Albany this was understood to have greatly simplified the operation of government. It has a great additional advantage in putting a stop to all tedious debate and discussion. The member who expects to vote as he is told has no motive for debate or discussion. In State legislatures, the control obtained by the machine over the Speaker has been a most important step. The Speaker, formerly a judicial officer, like the Speaker of the House of Commons, or the presiding officer of the Senate, has obtained almost autocratic power in the advancing or retarding of legislation. Given a thoroughly "harmonious" machine, and a speaker as its agent, the House of Representatives easily vies with the legislature at Albany. By "harmony" is always meant a blind and unscrupulous obedience of orders.

The operation of the machine in executive offices, whenever these offices are elective, is, if anything, worse. The selectmen of a town, the trustees of a village, or any elective commission

can easily be brought under its power, with the same, and sometimes worse, results. These bodies, in theory, are responsible *in solido* for the discharge of their duties. They are supposed to exercise jointly all the functions of their office, and to be answerable for the non-performance of them. But this sort of responsibility is soon sapped. As soon as they find that what really keeps them in office is not answerability to the constituency but obedience to the orders of their nominators, they find it much easier to parcel out among themselves the duties of the office. For with the duties goes the patronage, and, for the proper disposition of this, the machine needs individual responsibility to itself and must have it. Under this system one member may be given the roads, another the police, another sanitary matters, and the salaries of subordinates or pay of employees in these different branches go to him also. He parcels these out in obedience to orders from above; the commission as a whole is responsible in theory to the constituency for the result, but in fact not to anybody; while each official gets renominated or promoted if his behavior with regard to patronage, jobs, and pay is satisfactory to a

body which has no legal or responsible existence at all.

Taking the government as a whole, the machine is either locally or ubiquitously an *imperium in imperio* which establishes, through its control over nominations, the responsibility of the official to itself, and practically dispenses him from that responsibility to the people on which popular government alone can, in the long run, rest, and which we mistakenly believe to be enforced by perpetual elections. Its control over nominations is obtained through the complexity of the nominating system and the multiplicity of elections, both of which have come from a mistaken idea that responsibility to the people can only be secured through elective machinery and short terms of office. The electoral machine, as it now exists, is analogous to, though not exactly the same as, the "spoils system," which was developed in the Federal civil service through rotation. It could be established, worst of all, just as thoroughly in the judicial system, by making judicial terms very short, as well as making them elective. Fortunately we have been saved from this extreme in the Federal government by the tenure having been made

that of good behavior, and in the State governments by the fact that "judicial spoils" are not generally very rich. But in New York an approximation to machine judges has been made, and under Mr. Croker was quite successful. His testimony before the Mazet committee has been often republished. He expected judges, he said, to act on the bench "as members of the party" and appoint Tammany referees, a very considerable part of the business of the courts being in the hands of referees. The following were some of the questions and answers:

"Q. So we have it, then, that you, participating in the selection of judges before election, participate in the emolument that comes away down at the end of their judicial proceeding, namely, in judicial sales? A. Yes, sir.

"Q. And it goes into your pocket? A. I get —that is, a part of my profit.

"Q. And the nomination of a judge on the Tammany Hall ticket in this city is almost equivalent to an election, is it not? A. Yes, sir.

"Q. So that, if you have a controlling voice in the affairs of your party, and secure the nomination of true men, you may be sure that at least in the real-estate exchange and in the firm

of Meyer & Croker you will, as a true Democrat, get some of that patronage? A. We at least expect he will be friendly to us.

"Q. And you get some of the patronage?  
A. We hope so.

"Q. Then you are working for your own pocket, are you not? A. All the time."

The following is an account of county machinery taken from a leading Massachusetts newspaper, analyzing a report by the Boston Finance Commission:

"The political system has had an unrestricted field in county affairs. It has not been subject to the check of the civil-service rules. Under the Massachusetts system of county administration, the county organization is a law unto itself, answerable only to the electorate at annual elections, at which time it is seldom found necessary to offer detailed explanations. In counties other than Suffolk, county commissions have built up machines, sometimes independent and sometimes in connection with other important political influences. 'County Rings' are notorious as dominant political factors, and sometimes as profligate spenders of the people's money for political ends. Occasionally condi-

tions have become noxious and reforms have been demanded and secured. But, as a rule, the political power of the county organization has been used to make that power self-perpetuating.

"In Suffolk County the powers of the county commission have been vested in the city council of Boston. The county has been a useful political adjunct to the municipal machine. Extensive as has been the field for political manipulation offered by the ramifications of the municipal administration, it has not been equal to the demands made upon it by the politicians. The county, with its annual expenditure of \$1,000,000, subject to no review save that which the city council might make, has offered a rare opportunity for the payment of political debts. The finance commission indicates clearly how this has been done. Appropriations are made upon estimates furnished by the city auditor. His sources of information, furnishing the basis for such estimates, are the requests of certain county officials or the expenditures of previous years. It is not apparent that needs and desires are ever compared to determine the accuracy of estimates. Methods of expend-

ing appropriations are seldom watched or made a subject of inquiry. There is no check upon the increase of salaries or the creation of new offices. In twelve years the number of employees has more than doubled, with similar increases in salaries. Log-rolling methods have increased salaries \$82,202.33 in four years. The system has been a standing invitation to trades with members of the Boston board of aldermen for positions for favorites in exchange for county positions. County officials, if not willing parties to such trades, have been held up with threats of reduced appropriations. . . .

"The application of civil-service laws to county administration, the creation of a series of checks upon and reviews of county expenditures, and the requirement of actual estimates of need as a basis for appropriations, as suggested by the finance commission, will accomplish some reforms. Mayor Hibbard's prompt summons to the committee on county accounts may be of some avail. But the interests of the taxpayers in other counties, as well as in Suffolk, require that some far-reaching reorganization of the system of county administration be effected."

Such is the county machine in one State as

described by the Finance Commission. It is merely one individual of a species.

Dissipation of responsibility is a more elaborate and artistic contrivance than multiplication of offices. I do not know whether I have made this point entirely plain. In an industrial State in which a vast amount of money is spent on public works of all kinds, patronage does not mean merely offices, but money paid out under contract. Now, there is no doubt that division of responsibility promotes the disbursement of money in a great number of ways. If there is a board of four men who have the disbursement of a million, so long as they act as a body, and each is under a real political responsibility for the other, they are not likely to be wasteful. But if you divide the responsibility and give to each member of the board the spending of \$250,000, with the understanding that what one does all do, it is surprising how fast the money will disappear. Thus, one of the natural results of a division of spoils is a dissipation of responsibility. It is obvious that each member of the board is entitled to patronage to the extent of \$250,000, and when it is what is called a bi-partisan board, in no other way can the party balance be

maintained. So dissipation of responsibility is born of patronage. By carrying the matter a little further and establishing what is graphically termed a "rake-off," expenditure may be still further accelerated; but we must be careful not to go too far, for we are touching on delicate ground; prudent "organization men" are careful never to expose themselves to the charge of a breach of the criminal law. A failure to notice the importance of this rule has given members of some "rings" much trouble; enlightened politicians, as can be seen by the testimony of Mr. Croker, quoted above, have learned how to enjoy the fruits of corruption without the risk of indictment. Their protected system has enriched the language with an illuminating phrase, "honest graft." The machine allots the offices and provides the votes which decide who shall fill them, and this it does upon a tacit understanding that it is to have an interest in the distribution of the patronage. Translate this into terms of contract and day's labor, and you will see at once why the cities and local public works supply the life blood of the electoral machine of our day, exactly as the custom-houses and the navy-yards and the post-

office and the federal departments made the federal civil service a by-word a generation ago.

Details of machine misgovernment are as various as those of the government on which it preys, and it is idle to attempt a study of them except with power from the state to "send for persons and papers." Its work is secret and the secrets are not told, because secrecy is one of the sources of its power. There are rings, and rings within rings. Then, too, a machine powerful to-day may disintegrate to-morrow, owing to the death or retirement of its head. In the perfected machine, however, of which Tammany is the type, this never occurs. Tammany without a boss is as impossible as a kingdom without a king. Business is managed as it was at Rome, through popular forms, the mayor, the presidents of the boroughs, the legislative body (which passes no laws); but the process is arranged by the head and his real co-adjutors behind closed doors. The results we know, and are not in the dark as to cause and effect. *Mutatis mutandis*, it is the same in all machine-governed territory. The state machine is not different in kind, but it has a different

field of operations. What a state machine exists for may be seen in the struggle of Governor Hughes with the New York machine. Governor Hughes announced himself as opposed to sham responsibility, to a dissipation of responsibility. "I am the responsible Executive of my State," this extraordinarily obstinate man declared, "made so by the Constitution. To whom am I responsible? Can I be so for power which others control?" This is called "kicking over the traces."

— ✓ The merit system in this country, though not yet completely introduced, has, as far as the civil service is concerned, paved the way for dislodging the electoral machine. When all the fourth-class postmasters, who are the principal remains of the old system, are brought within the new, and the system has stood the test of a change of parties, patronage will play no more part in this service, and government clerks will be no more bled for election expenses here than they are in England. The civil service of the government will have been taken out of "politics" and placed on the basis on which any successful private business is carried on. And what is true of the federal civil service is also true of the

civil-service system in States and cities, so far as it is applied.

But supposing the civil service to be entirely free from patronage to-day, the electoral nominating machine would be still in operation throughout the whole elective system, and the problem now before us is whether we can find a means of getting rid of that. For, if there is anything in the teachings of experience, the machine as it exists to-day is as full of poison as the civil service ever was.

If the view of the subject which I have attempted to outline be correct, there is no way to get rid of the machine except through giving up the delusion that the multiplication of offices and elections is the way to enforce responsibility to the people or that they can do anything but intensify the evil. We have got to retrace our steps and face the fact that popular government can get responsibility only through a very sparing use of elective machinery, and by relying mainly on tenure, responsibility centred in a single head, and emoluments of office adequate to make it attractive to the best and most fit. In other words, the road to good government lies through the simplification of political ma-

chinery. If any one says that this is a dream of perfection, I emphatically deny it, and advise those who think it so to read the history of the struggles by which the civil-service law was introduced and what was accomplished in the teeth of the indifference or jeers of a great part of the press, and the bitter and obstinate opposition of almost every leading politician in the country, by the efforts of three men, one of whom was the writer in whose honor this chair was founded.

The evils of machine government are pretty generally recognized, as is the necessity of doing something about them. The current remedies proposed may be said to come under two heads.

*First*, the popular election of senators, on the theory that the election by the legislature (the latter being more or less in the hands of the machine) produces senators who are the creatures of the machine—who hold their offices at its pleasure and are not really responsible to the State sending them to Washington. This reform requires a constitutional amendment, though the difficulty may for the time be got over by any State legislature, which wishes to introduce the change, binding itself to send to Washington

any candidate who appears by a preliminary vote to have the majority of the party vote behind him.

*Second*, the direct primary is advocated, *i. e.*, direct voting in the primary for candidates, thus doing away with the delegate convention, which is now usually the scene of the most decisive operations of the machine.

Both these reforms are open to the criticism that they are founded upon the idea with reference to democratic machinery which I have ventured to call the democratic mistake; that is, that whenever and under whatever circumstances you want to secure responsibility to the people, the only way is by a popular vote.

If this view is correct, we might expect to find that the proposed reforms, so far as they have been introduced, have not proved entirely satisfactory, and that seems to be the case. I find the plan of direct nominations thus summed up in a quarter very unfriendly to machine government:

Direct nominations are still in the experimental stage. In Mississippi, Georgia, South Carolina, and elsewhere in the South, complaint

is made that the Populists vote at the Democratic primaries and that by holding the balance of power between two Democratic factions they can often dictate the Democratic nominations, which are equivalent to an election.

In Missouri this year, although a majority of the Democratic legislators favor Folk for Senator, Stone had a plurality in the popular vote and will succeed himself. In this case, the primary system of selecting Senators has accomplished the exact opposite of what its friends claimed for it.

In Oregon a Republican legislature is asked to elect a Democratic United States Senator because Governor Chamberlain was successful at the State senatorial election. In Wisconsin the charge is made that Senator Stevenson's victory was won by the use of money. Michigan and Illinois have proved that the machine under the primary system can retain the advantage it had under the convention system, and in Michigan both Republican factions charged gross irregularities in the vote for Governor.

The direct primary means two elections, one of which has to be paid for by the candidates themselves. This makes it very difficult for a poor man to gain a nomination unless he happens to have an overwhelming personal popularity or a rich backer. If left to his own resources he cannot pay the heavy expenses of the preliminary canvass, which involves railroad fare, hotel bills, hall rent, advertising, etc. In the recent

Detroit election it was estimated that the primaries cost the various candidates no less than \$250,000.

A nominating system under which men like Woodruff, Barnes, Ward, Connors, Murphy, and McCarren can name the candidate is bad; yet nothing will be gained if the State substitutes a system which means practically two elections and still leaves the control of nominations in the hands of the bosses.

In other words, the system is more complicated than the old, which it is introduced to simplify.<sup>1</sup>

In the early city states of Greece, the people managed everything directly through a popular vote. But whatever virtues the principle had in it when in use in very small communities, it has absolutely failed to work in large communities, and to judge by our own experience the direct primary will have the fate that the convention system itself had—it will at first tend to popularize nominations—that is, make them more accessible to popular influence—but later on it will, through its complexity, increase the power of the machine. The fundamental difficulty will always be that no one but the professional poli-

<sup>1</sup> I do not see anything in the presidential campaign of 1912 to call for any modification of this view.

ticians and their henchmen, the "workers," have the time to devote to picking out candidates and organizing the forces of the party. The inevitable result is that these professionals and workers do these things while the others pay the expenses.

As already suggested, it is in another quarter, according to my belief, that we must look for signs of improvement. Responsibility to the people does not necessarily mean, so far as the actual operation of the government goes, responsibility at short intervals to a popular vote. It means answerability somewhere for the performance of the duties imposed by the people upon the incumbent, tested solely by the result. Now this responsibility is not increased by any increase in the number of officials; and it is greatly diminished by the frequency of elections, and in the shortening of the terms of office. On the other hand, responsibility increases with a reduction in the number of officials and elections, and the lengthening of the term of office. The same causes which produce one or other of these effects increase or diminish respectively the power of the machine by taking away from it its occupation. If all the powers of the government

of the State of New York were, after full discussion, vested in a commission of five men for ten years, by a popular vote, it is obvious that during this time the State machine would find its occupation gone. This is an extreme case, but it is an illustration showing the direction in which alone the powers of the machine can be successfully undermined.

It is in quarters in which the operation of the machine is most vicious and oppressive that one might expect to see the first signs of some effective contrivance to counteract it. This is conspicuously the case with city government. A triumphant Tammany Hall would represent the destruction of popular government. The same system is at work everywhere, but it is only within recent years that the disease and its causes have been studied. The result has been the discovery that the worst of the malady lay in the complexity introduced by exclusive reliance on frequent elections to secure responsibility, and the only remedy hitherto tried with any success has been a substitution for the old municipal regime, with its wards, and districts, and councilmen, aldermen, and mayor, of government by a single-headed commission; that is,

turning over the city bodily to a small body of men vested with most of the powers of government, but subject to the power which clothes them with these powers—that is, the community itself. This has as yet been tried thoroughly only in some comparatively small cities, but the nature of the cure is not dependent on the size of the city.

The history of the government of the City of New York during the last fifty years is that of a struggle, on the one hand, to simplify the government of the chief commercial city of the country by lengthening tenure—the mayor has now a tenure as long as that of the president of the United States—through making responsibility in heads of executive departments single instead of divided, wherever possible; by increasing salaries, by getting the city civil service out of politics, and making its tenure depend upon merit; on the other hand, to strengthen the hold of the machine through the legislature at Albany and through a rigid control of nominations. The legislative control at Albany has, of course, always complicated and still greatly complicates the problem.

*LECTURE V*

LIMITATIONS



## LIMITATIONS

The theory of checks and balances has fallen into discredit, partly because it has been misunderstood; partly because it has not worked altogether as was expected; partly also because the study of the operation of government as a human contrivance for the attainment of definite ends by means of the deliberate use of will and motive has been in a sort of eclipse; partly owing in this country to the mistaken idea that we had solved the problem of popular government once for all by means of continuous universal suffrage. Now that it is beginning to be perceived that this tends to produce cumbrous and irresponsible government, and to pervert popular into machine government, interest in the subject seems likely to be revived.

Checks and balances are as old as Athens and Rome, and are founded on a very simple principle which is as old as government itself. The principle is that in public affairs the love of power *is a constant motive to increase power*; that

power always tends, unchecked, to become unlimited, or, in other words, arbitrary; and hence to check it some counterbalancing tendency must be called into play.

Writers on government, in this case as in so many others, have no doubt pressed a familiar tendency too far. It is not true as a universal principle that all power succeeds in aggrandizing itself. There are many familiar instances of power which with time has grown less. The *patria potestas*, which was a primitive absolute dominion of the father as the head of the family, including power of life and death, has dwindled until, even in countries deriving their laws from Rome, it is hardly more than a mild control carefully supervised by the courts. It was once thought to be the duty of a good judge to "amplify" his jurisdiction. Such a practice now would be with us an impeachable offence. The temporal power of the Catholic Church, after expanding and increasing for centuries, has come down to very modest proportions. In these cases, other causes have been brought into play to counteract the tendency. Irresponsible and uncontrolled power always tends to increase and extend itself, for the simple reason that it is irre-

sponsible. *A priori* it must do so, because the desire of human beings for power is illimitable and, like any other passion, grows by what it feeds on. Experience teaches the same lesson in the history of every despotism, and of every mob, once free from the control of law, and of every unfettered aristocracy. Make the possessor of the power responsible for his acts, and enforce the responsibility by practicable means, and the tendency to expansion is stopped, and either the power remains constant—as, for instance, in the case in this country of the ordinary judicial power—or even may, under the influence of other causes, diminish.

In all popular governments it is considered desirable to control the tendency to aggrandizement, and it may be done in two ways: first, that which we have been considering, making the person who exercises the power responsible, *i.e.*, answerable, for its abuse; second, by limiting the power itself in some way. One of the most obvious ways of doing it is that suggested by nature and history, *i. e.*, the opposition to it of some other power which will balance it and hold it in check. As in the early world, and indeed down to very recent times, there always

appeared to be three mighty forms which political power took, engaged in an endless struggle for the mastery, it seemed fair to infer that a true function of each might be to hold in check the other two, and this result was thought to have been reached in the English constitution, in a nice balance between the Crown, the Aristocracy, and the People. Unfortunately, if the balance is established by accidental causes, and not by design, it may be very unstable. If it is only a fortuitous balance between class interests, there is no reason why one class interest should not swallow up another. At any rate, this is what has happened in England, the House of Commons having encroached until it and the electorate behind it have destroyed the balance and established what English writers like Maine hold to be a close approach to simple democracy. The complaint is constantly heard in England now, that our constitution is more conservative than theirs. In American governments the theory of the balance between the three forms of government was out of place, because their whole framework rested on the sovereignty of the people, and a much more elaborate system of limitations was set up than any hitherto

dreamed of. It involves not merely the independence of the three departments, which are balanced against each other, but the balance of the States against the Federal government, and the executive against the Senate, the Senate against the House. Supreme above all is put the judiciary, which limits all power, though in itself having none except what the executive must furnish; all judicial decrees and judgments being carried into effect by some branch of the executive.

In this scheme may be seen the germ of a new principle till recently not hitherto much considered, but destined apparently to rise to great importance. Translate the old dispute between Monarchy, Aristocracy, and Democracy into the terms of modern industrial society as we know it, without heredity, privilege, or prescription of any kind, and what does it become? In the answer to this question, I think, lies an explanation of much of the ferocious criticism formerly directed against the Federalists as "monarchs."

The Federalists differed from the Republicans and leaders like Jefferson in taking a purely practical view of government, untinged by sen-

timentality or speculation; most of them were men of affairs, and in many cases large property owners, accustomed to the management of men and business. In their eyes the old dispute, as suggested in the last lecture, came to have another meaning, *i. e.*, What functions of this government will best be discharged by one man? What by a few men? What by many? What by this branch of the government, what by that? Put in this way, the answer was necessarily: That depends on the nature of the function.

Now upon analysis it turns out that the most conspicuous functions which we call executive, and which in the older world were vested in an hereditary king, were vested in him, not wholly by accident, but also because they were of the kind to be performed by one man. The kingly office answered for ages, because, as we should say, it constituted a strong executive. The judicial office, which the Athenians vested in a multitude, experience shows to be best exercised by experts in law, few in number; the judiciary the founders of the American State accordingly made a select body. The problem as to the legislature and the electorate they left where

they found it—in the hands of the many, governing by representation.<sup>1</sup>

What the American Federal Constitution did was really to introduce to the modern world a new view of the whole subject, which may be summed up by saying that in the operation of government all contrivances are designed, among other things, to answer the questions: In what functions of government is the action of one

<sup>1</sup> In Europe the struggle of the three forms continued for two generations; as late as the middle of the last century it was still believed that the one potent cause which explained all the phenomena of politics was the form of government. To put the matter in a different way, it is not merely the fact that the sovereignty may be in the hands of one man, or a few men, or of the general body of the community, that is important; it is a vital fact also that every function of government is performed either by one man, or by a few men, or a large number. This is not the difference between monarchy, aristocracy, and democracy, but a practical question of observation and experience. Experience shows, for instance, that the responsibility of a court for the trial of cases is usually at its best if it consists of one judge, but this does not make a trial court consisting of a trial judge a monarchical institution. A court of appeal always is made to consist of a number of judges, but this does not make even the Supreme Court at Washington a privileged aristocracy. Our executive is one man (we might have had two, as they had consuls at Rome); but this does not make him a king. The test is in the sovereignty. If that is popular, *i. e.*, if the effective power of initiating, carrying on, and changing lies in the people, then you have a republic. But, under all forms of government, certain functions will be found to work in the same way, and to fall naturally into the hands of one, a few, or many. To take an extreme instance, from time immemorial the regular representative of a country abroad has been a single man. It is almost proverbial that three men or two

man best? How long shall power be held? How shall responsibility be secured? In what functions by that of a few men? In what by that of many? The Republicans made out only that a constitutional president was a Federalist substitute for a king, and denounced their opponents as "monarchs."

But the system would not be complete without some contrivance to set limits to the bound-

men cannot do it as well, if at all; this was tried at the time of the Revolution and was a signal failure. On the other hand, the work of legislation has always in the long run been found to require a numerous body; because what is needed in a legislature or constitutional convention is representation and debate, for debate, it must always be remembered, is a function of government just as much as action. Experience shows that the head of an army must be one man; a council of war never fights. These questions in early times were not studied nor attended to; ten generals for an army was not in Greece thought an absurdity. One reason why the battle between the three forms raged so hotly from the time of the revival of learning almost to the present day was, if I am right, purely intellectual. It was really believed that the form of government was a decisive cause which produced bad or good government of itself. Believers in a Monarchy or Aristocracy looked upon Democracy once adopted as a thing fatal to whatever was worth preserving in the State, and *vice versa*. But behind this there was the fact that the principle of heredity in privilege, which was practically universal over Europe, was really an abridgment of freedom, and the question of the form of government was confounded with this. It was not until privilege as the basis of society was finally driven off the field by equality of opportunity, and universal suffrage recognized as the power behind the throne of the common welfare, that it was suddenly perceived that the old struggle of the three forms belonged to the past.

aries of the powers delegated to one man, to a few men, and to the many; and this contrivance was found in the relation of the judiciary to the other two; and that they might perform this novel function, never before deliberately intrusted to human beings, they were given a tenure of office for life, so that they are to-day the permanent and supreme part of our system, outlasting presidents, and governors, and congresses, and legislatures.

It is a commonplace of American constitutional law that the federal government is one of delegated powers. Had this merely meant that the States had created a federal political agency and devolved upon it powers which they might otherwise have exercised themselves and might at any time resume, there would have been little that was new in the contrivance, for, as I have endeavored to show, all government which is not carried on by a single person or persons in supreme power with their own hands must be delegated. Wherever there are political agents, judicial, legislative, or administrative, the power they exercise is delegated to them. Representation is only a peculiar and refined form of delegation; its importance lies, not in its being a

novel discovery that A, B, and C can transact political business through D, their agent, at a distance, but that through this contrivance the whole legislative business of a community can be transacted at a distant centre through elective machinery, thus making free institutions possible throughout immense areas and for great populations—in primitive times an almost inconceivable idea. That representation is at bottom only a kind of delegation is seen only too clearly to-day in the fact that, owing, among other causes, to the extraordinary facilities for communication, representatives tend to become mere delegates, acting under instructions from their constituents without liberty of choice.

In the government of the United States, the peculiarity lying behind the phrase, “a government of delegated powers,” is the one just adverted to—that our Constitution leaves it to the judicial power to interpret the instrument conferring the powers and determine how far they extend. This is perhaps our greatest contribution to the development of free institutions, and it is a contrivance practically unknown to the experience of the rest of the world. It is embodied in our State constitutions also, and it is

what gives, under our system, their great importance and authority to the courts, placing them, for the single purpose of maintaining the limits of power in the Constitution, above the executive and above the legislature. That this was the necessary effect of the Constitution as adopted was foreseen and explained by Hamilton, and the device was entrenched in our system by Marshall. Though in a long view of history it is still only an experiment, it has survived the storms of a century, and, if we may judge by what is going on about us, is in full vigor to-day. When we reflect on the previous subordination of the judicial power to the Crown, the genius of the men who grasped the possibility of using it in this way stands out conspicuously. The judiciary is the weakest of all the departments of the government. It possesses no physical force of its own and relies on the executive, the very department to which it had hitherto always been subservient, for physical power to compel obedience to its decrees. What it cannot compel it can only obtain by the appeal to reason and law which its judgments make. That Hamilton should have perceived that an independent, responsible, and pure bench

would in the long run command the compliance of the executive and the legislature, and that in this way the fundamental law would be supreme, under circumstances far different from any that could then have been foreseen, is a memorable illustration of insight into the motives which determine the operation of government. Recall the circumstances, for instance, which surrounded the fierce and prolonged struggle between Andrew Johnson and Congress, following on the heels of a long civil war, which had enormously inflated for the time the powers of the executive, or those which recently marked the onslaught made at the same time by public bodies on the elementary rights of property.<sup>1</sup> When this was at its height and a decision imposing a fine of twenty-nine millions had been reversed by a federal court of appeal, one of the judges was asked what view he took of executive expressions of disapproval, and was reported to have said in substance: Expressions of opinion on the subject by the President do not concern me. He has his own department of the government to administer; I have mine. What he thinks of

<sup>1</sup> The settled rule that neither Congress nor the State legislature can, under pretence of regulation, pass measures of confiscation is enforceable solely through the courts.

our interpretation of the law is of no consequence, because our interpretation of the law is the law itself. This judge's opinion has been reaffirmed. The President's lease of power has run out.

This contrivance, then, is our fundamental limitation of the powers of government, and it is a balanced limitation. It checks and limits the legislature and the executive, while it does not tend to encroachment, because the judiciary depends for its power on the executive, and for its credit mainly on the persuasiveness of its judgments. The Dred Scott decision, for instance, did not persuade; the result was disastrous to the Supreme Court as then constituted.

The amount of good that the wisest governments have done in their attempts to ameliorate the condition of mankind is calculable; what is incalculable and almost beyond the reach of the imagination is the vast power for harm that the agency of irresponsible power wields. So prosperous has our own condition been that we have almost forgotten the past history of the world; but the innate power and potency of government for evil, like that of man, is what it always has been. The power to tax, it has been

very truly said by one of our greatest judges, is the power to destroy, but the same thing may be said of almost all the powers of government. Except so far as they are restrained by human enlightenment and contrivance, the power of destruction is inherent in every form of government, democracies, aristocracies, and despotisms.

To curb, restrain, and limit this fatal power has been the great effort of man as he has become civilized, and we are all familiar with the principles of common right and freedom which governments have gradually and with the greatest difficulty been forced to admit. Governments in which they are admitted and acted upon we call free and constitutional governments. So slowly has the work been done, such repeated lapses into barbarism have there been, so tremendous has been the resurgent power of brute political force in the hands of ignorance, superstition, and cruelty, that it is only within the last one hundred and fifty years that we have become reasonably secure in our right to move about and change our place of abode freely, in our right to carry on our correspondence without its being opened, in our right to be exempt

from having soldiers quartered on our families in time of profound peace and from having our houses searched for the purpose of making up a case against us, in our right to publish freely our opinions on public affairs. And, generally speaking, all these gains have been made solely through changes in public opinion and the law, and as they have been made so they may be taken away again by other means. There is as much potential tyranny in a popular government as in any other.

Legal limitation of power by human design itself is therefore an important addition to the theory of constitutional government, and as its principle is applicable to any power, it is natural to find it applied here in ways never before dreamed of. At the time of the formation of the Constitution, one power greatly dreaded was that of the legislature, and this was limited by the veto<sup>1</sup> in one direction (that is, of course, an instance of the use of the power of the executive to hold the legislature in check) and by several direct limitations of power intended to be enforced by the judiciary, *e.g.*, prohibiting the sus-

<sup>1</sup> The post-adjunction veto, as used in the State of New York, has been the means of killing hundreds, if not thousands, of corrupt or useless measures.

pension of the *habeas corpus*; prohibiting bills of attainder, and *ex post facto* laws; prohibiting any protective system between the States; prohibiting States from entering into relations with foreign powers, coining money, impairing the obligation of contracts; prohibiting Congress from interfering with the free exercise of religion, or establishing any religion, or from abridging the freedom of the press, of speech, and of assembly and petition, or from depriving any person of life, liberty, or property without due process of law. Whether in the long run such limitations can outlive the storms of executive or popular passion depends upon whether there is a power always at hand to enforce them. The South Americans, too, introduce "guarantees," as they call them, of the same sort into their constitutions; but they are not enforced by the courts, and are consequently not enforced at all except when it is considered advisable by the executive. They may be suspended by proclamation.

The system of limitations formally introduced to the world by the *Federalist* has been our system of government ever since, but has been much extended. One of the most familiar instances is the adoption of the fourteenth amend-

ment after the Civil War, by which the States are forbidden to deprive any person of life, liberty, or property without due process of law, as Congress had been forbidden to do the same thing by the fifth amendment. The original scheme of operation has been little changed, but in the States, where amendments are more easily passed, the powers of the State legislatures have been limited in a very remarkable way by taking away their power of special legislation, with a view to preventing the grant of special privileges to corporations or individuals. Another important modern kind of limitation is that which restricts States, towns, counties, and cities from incurring debt beyond a certain limit.

On the whole, it cannot be said that the system has worked for anything but good; does it go far enough? We have not made it impossible for States to repudiate their debts, and we have not limited the power of Congress to do countless wrongs without redress, which in England and on the continent are remedied by an ordinary law suit against the government itself. We have not broken up the absurd system by which legislative committees decide disputed

✓ elections in the party interest—in England this is handed over to the courts—and we have not brought to an end the scandal of private bill legislation, but the fault in these cases is ours. We do not choose to cure the evil.

Now, there are three points with regard to this which seem to deserve attention. One is that all these checks and balances and limitations are devices for curbing that irresponsibility in the discharge of functions confided to political agents, which, as we have seen, it is the misfortune of our institutions to tend at other points to promote. Universal suffrage finds it difficult to get together a legislature such as our government theoretically demands—that is, an assembly of distinguished, responsible representatives—and finding itself confronted with an irresponsible body limits their power to do mischief by resort to the judiciary. By this ✓ means the limitation is enforced and responsibility, so far as it can be, secured.

✓ The second is that a check on the irresponsible power of one department by means of another becomes worthless the moment the second department becomes itself irresponsible, and this it may become either through usurpation or sub-

servience. The judiciary with us has shown little or no tendency to usurpation, but it may in the future be made subservient. Judges are continually urged to develop the constitution by interpretation, and have even been exhorted to resort to what is called "sociology," so that laws otherwise unconstitutional may be passed without any dread of their being set aside. In other words, the suggestion is that we should introduce a totally new system of government by means wholly illegal—the Constitution having provided for any such change only by way of amendment. The objection to this is that it makes Congress supreme and destroys the limitation by which the courts are set above the legislature.<sup>1</sup>

<sup>1</sup> When these lectures were delivered, the suggestion that courts may be made subservient to Congress and the executive by means of the "recall" of judges, or decisions, had attracted little attention. The objection to the "recall" of judges by popular vote is that it is a blow at the individual independence of the judge. A judge subject to such a process is less independent than if his tenure of office is dependent on the machine; for his dismissal may be by sudden whim, while even a judge who has secured his nomination from a "boss," holds at least till his term runs out, or until he is removed for cause, e. g., by impeachment. If the recall or dismissal is to be by the legislature, such a dismissal is practically provided for already in existing constitutions, by an orderly representative procedure. The difficulty with the *recall of decisions* is that it is founded on a confusion between a judicial decision or judgment, and the *opinion* of a court. A judicial de-

The third and most important point is that this system hinges upon the integrity and authority of the judiciary, and is good or bad as the judiciary is good or bad. Hence, it ap-

cision or judgment is generally an order, or command, that something be done or not done; *e. g.*, that a man be arrested, that his property be sold; that possession of land or other property be delivered; an act be not done or attempted; that a payment be made. A decision is founded on *reasons* which are sometimes stated in connection with the judgment, but need not be. In most cases of first instance, or original trial, they are not stated at all; summary decisions, as on evidence, in the course of a trial are generally not stated at all, and in courts of appeal, there are multitudes of decisions, *e. g.*, in the New York court of appeals, which are rendered, on the judgment below, without any reasons being given. The recall of a decision therefore must mean either that the judgment or decree is to be cancelled, or that the *opinion* is to be cancelled, or both. If opinions were to be cancelled, the natural result would be for judges to omit to give any reasons; which would tend to an opportunity for greater judicial tyranny than any that now exists; if both judgment and opinion were to be reversed, there would be no result in the litigation, and confusion would be introduced into the case; if judgments were to be recalled, the same confusion would be introduced, without any advantage. If some *principle* of law, on which the judgment was founded, were to be recalled, this would be a change in the law by the legislature or the electorate, in so far nullifying the work of the court, putting, in the one case, the legislature above the courts, whereas the fundamental idea of our judicial system is that this shall never be done; in the other, enabling the electorate to change the existing law by chance vote, which is also fundamentally opposed to the orderly administration of justice, as known to civilized man. Such returns to pristine barbarism have not been proposed, so far as I know, since the Athenians made law and recalled it through decisions *ad hoc*, in mass-meeting, and changed their reasons to suit the case, as it arose—one of the worst blots on the civilization of the Athenian state.

parently works better in the Federal than in the State system, the Federal judiciary being, for reasons already stated, a more powerful and responsible bench. In fact, it may be said here that those who deplore the weakening of the importance of State rights in our system overlook the fact that it is connected with the decline of the State judiciary owing to the elective system. With a subservient judiciary ready to vary or interpret the law to suit the legislature and the executive, the whole system of constitutional limitations which has been the key to the stability of the government would be swept away. As already pointed out, there is nothing that popular bodies like legislatures are fonder of than confiscation of property. It sometimes takes the form of out-and-out spoliation, sometimes that of pretended regulation. The line between the two is not easy to draw and nothing in our experience warrants us in trusting the legislature to draw it. We accordingly intrust the task to the courts, and under the fifth or the fourteenth amendment they hold that confiscatory legislation is not within the powers of either Congress or the States. But that is all that protects us. Make the judges subservient to the

machine or the party, either by making them elective or by packing the courts, or in any other way, and there is nothing that stands in the way of assaults on property leading to confiscation on a great scale.

The last thirty years, and especially the last three or four, have been remarkable for attacks on property and remarkable attempts to produce subserviency among judges. Of these, the most insidious and most dangerous is the attempt to pass a bill to take away or hamper their power to enforce their own decrees. The power to enforce law, or declare a law unconstitutional is of little value unless illegal acts can be prevented, and one of the ordinary ways of preventing operation is by means of an injunction, *i. e.*, the anticipation and prevention of wrong. In order to cripple the courts in labor disputes, the demagogues have been endeavoring for years to pass a bill practically destroying the power of a court to enforce an injunction summarily, or, in other words, to make its own decrees respected. But no such law can be confined to labor disputes. It will apply to all disputes, and the moment such a law is actually enforced the authority of the court is undermined.

The enormous importance of the subject cannot be exaggerated. We have staked the permanence of our system on the judiciary on one side, exactly as we have staked it upon the vigilance, character, and intellect of the community at large on the other. We have greatly impaired the efficiency of the latter by allowing machine government to fasten its hold upon the legislative branch; if we now do not protect the judiciary by every means in our power, our case will certainly be worse than it is now.

If these views are sound, the survey which we have taken of the operation of our government points to some definite conclusions. In the first place, we have in the government of the United States the first attempt on a great scale to introduce into the working of a free government the fundamental principles of delegation and responsibility to the people. This is accomplished in our Constitution partly by a system of checks and balances and limitations of power, which have thus far answered remarkably well the expectations of the designers. Their great dread was that they could not establish a permanent union, and that the country would be split up, as Europe has been, into states hostile to each

other, armed against each other, and frequently at war with one another. From the beginning of the world, internal dissension and external violence had been the bane of republics never large enough to be secure. To prevent this, they made a federation of a totally new kind, in which the States retained their sovereignty within a certain field, but their citizens became directly responsible to the central government.

It was the imagined retention by the States of the sovereign right to withdraw from the Union, which was only another word for the irresponsibility which they had once enjoyed, which led to that aggrandizement of State rights that ended in secession and the Civil War. The principle of union was vindicated, unhappily through war, and the irresponsibility of the States disappeared. It was the result of the Civil War which justified everything that the expounders of the Constitution had said about the impossibility of a strong free government which had nothing to keep it going but a treaty between equals, which equals might tear up.

The system of checks, balances, and limitations relating to the executive, legislative, and judiciary has thus far proved its value by

maintaining the organs of government in much the same relative position which they occupied a hundred years ago.

But other forces have since been called into play which were never dreamed of by the founders of the government.

These forces, so far as they have been called into play by design, have rested on a fallacy with regard to responsibility to the people—the fundamental dogma of any free government—the mistaken idea that the way to attain it was the selection of all the agents of government by frequent elections or appointments for short terms. The result of this, combined with universal suffrage, was to introduce into the executive service all the evils of rotation in office, and in the State judicial service all the evils of an elective judiciary, and in public life in general to turn over in great measure to an organized and ubiquitous and irresponsible “organization” all nominations to office; thus often accomplishing the end of vesting the substance of power in the irresponsible controller of the machine, and taking away all responsibility to the people.

To aggravate the difficulties which we have been considering tend all efforts to increase the

sphere of the government. A remarkable feature of the government of the United States was supposed to be that alone among the great powers its sphere of action was strictly limited. The great body of powers inherent in any sovereign state, relating to education, health, morals, police, and order, the security of life, person, and property, were within control of the States, where they were before the Federal government was formed. This used to be thought a great safeguard against centralization. No new functions could be confided to the general government except by the amendment of the Constitution. But here the force of circumstances has been too great to enable the States to retain their original power to its full extent. Circumstances have changed. Improvements in communication never before imagined possible have brought the ends of the country to each other, so that many things originally local have in fact ceased to be so. The railroads, for instance, have become a net-work of lines extending across the boundaries of States as national highways, and under the circumstances it is natural that the courts should gain a jurisdiction over these, under the Constitution itself, which could not have

entered into the mind of anybody before railroads were built. In this way the sphere of the Federal government has been, without constitutional amendment, from time to time enormously enlarged. At the same time that of State government has been enlarged in other ways.

And we must not forget that the distinction between State and Federal jurisdiction is not binding on the machine. The machine, which is nothing but a congeries of committees or smaller machines, is ubiquitous and pervasive. Any particular machine is coextensive with the locality covered by the duties of an elective officer, but any particular machine is a part of the whole. The national committees are a part of it, but so are all the committees in the various States and towns which send out invitations to attend primaries and conventions.

Whatever enlarges the total sphere of the Federal and State governments also increases the power of the machine as a whole. The enlargement of the sphere of any government is always accompanied and made possible by the increase in the number of offices, and we must therefore admit that the continual enlargement in the sphere of Federal and State governments has

greatly strengthened the machine. Not a year passes that some new scheme is not brought forward for supervising or regulating, or reforming human activity, or regulating property in some way, in the interest of health, morals, justice, or education. Behind these movements come an army of applicants for office; and office, except so far as the civil-service rules apply, they must obtain through the machine. The extension of the sphere of government, the dream of the socialist, is bread and meat to the boss. In fact, universal socialism, with no artificial limitations on power of any kind, and with all the offices elective, and the terms, say six months, would be a machine paradise. I have endeavored to keep out of view questions connected with the sphere of government because they are different in most respects from questions concerning the operation of government. But here they mingle, and it is out of the question to shut our eyes to the fact.

For the same reason that I have avoided discussing the sphere of government, I have avoided going into the question of any but artificial limitations; natural and economic law impose limitations more severe and inevitable

than any that can be contrived by the wit of man. The old story of Canute and the sea shows that the fact of there being natural limits to political power was long ago familiar. Demagogues who propose to the democratic sovereign acts in defiance of natural laws play the part of the courtiers in the story.

On these natural limits of political action, laws, and votes, and even constitutions, have no effect. And the curious and very satisfactory fact in connection with this is, that the freer the world becomes the more impotent to override these natural limits governments become. In small primitive communities shut up within narrow boundaries, and with poor means of communication with the world outside, the natural law has less power; but once throw the whole world open and make communication easy and rapid and constant, and political power to interfere with natural law becomes weaker. It was comparatively easy to make Sparta a permanent camp, because Lacedemonians who did not like the system had no other to choose. You cannot turn a modern country into a Sparta because citizens will take a train or a boat for some other place, taking their

wives and families with them, where they can live on easier terms. So that in modern free states the government has to take such military institutions as the people will submit to.

That this is the case—that the most important of all limitations are those imposed by nature—seems to be an extraordinarily hard lesson to learn: witness the still wide-spread belief that political economy, which is merely an explanation of facts illustrating the working of human motive under certain circumstances, is an invention of capitalists and their friends for the spoliation of the poor. It has been said that individual experience is practically the only way in which the working man learns that if A is forced to give as much for eight hours' work as B in another place gives for ten hours, A will take his work to the other place; or that a laborer cannot get out of the same production the same wages while doing less work; or that it is a delusion that a laborer can force a higher rate of wages for a less amount of work; or that government can enable him to do so.

These limits imposed by nature on political contrivances are at the present time very unpopular, and the doctrine is preached that they

are not permanent limitations upon social forces, which are supreme. But these natural laws or permanent facts have an important bearing on the great question of the sphere of government. Those who disbelieve in them have no reason for doubting that the sphere of government can be extended in any direction, and for any object, and that the best government is that which governs most.<sup>1</sup>

<sup>1</sup>The true theory of the sphere of government, to judge of the future by the past, will no longer be an abstract one—that of the “least government”; but it may perhaps be based on the practical study of what government is forced to do and what in particular fields it cannot do. One principle at the bottom, may turn out to be that where uniformity is necessary, government must give it, because it alone can give it. It must settle the calendar; it must give us a standard of weights and measures, and the currency; it must tax us; it must make war and peace; it must provide for the administration of justice; it must regulate and make responsible all incorporated bodies; and, finally, though this is not a very popular idea just now, it must see, when it establishes a system of property rights, and those rights become vested in individuals on the faith of the system, that they are never divested without compensation. On the other hand, where uniformity is unnecessary, and where divergence is innocent, it must be made to keep its hands off; where responsibility and limitations are concerned, it must be made to follow the system of responsibility and limitations revealed as the best from time to time by human study and inquiry; in whatever field experience proves that its citizens can promote their highest good for themselves, without inspection, or repression, or promotion, or taxation, whether it be religion, education, charity, dress, art, literature, or recreation, let it bid them God-speed and leave them alone to their own devices.



*LECTURE VI*  
THE SUFFRAGE



## THE SUFFRAGE

Universal suffrage has become so much a part of our daily lives that we are apt to forget how very modern a contrivance it is, how little we have studied its use, and that it is always on its trial. There are still living a very few who can remember when it was still a novelty in this country; down to a comparatively recent period there were many who hoped to see it fail and perish. If I remember right, it was introduced into South America before it came into use in the United States; and, while it had been introduced there before, plebiscites were made the foundation of the second empire in France at very nearly the same time that it was being substituted for suffrage based on property here. Since then it has spread over the world, and wherever popular government has made any headway the old restrictions on the suffrage have been in great measure swept away. In empires and monarchies, so far as these have opened their doors to popular insti-

tutions, the basis of the suffrage has been made wide. In England and in this country the only question supposed to be open for discussion is whether it ought to be extended to women.

The great advantage of the use of universal suffrage for the settlement of political questions of the first magnitude is that it is very effective in making a settlement final. When a proposal has been before the public for years, has been thoroughly debated and discussed in all possible aspects, and has finally been voted upon and either accepted or rejected by the whole community, there is necessarily a general acquiescence in the result, partly because that is the usual way of settling the dispute, and also because it is impossible as a general thing to get together the partisans of a lost cause to renew the fight. In the field of practical government, a decisive vote plays the same part that a decisive victory does in war. The means of going on with the struggle are not wholly exhausted, but there is no longer any reason for expecting a continuance of the struggle to produce any different result.

This of itself, however, is not enough. If universal suffrage merely settled matters, it might still settle them so badly that it would com-

pletely discredit itself. Force and violence and chance will all settle matters in some way, and it is only if universal suffrage settles them on the whole as well as can be expected that its introduction will in the long run be justified.

The friends of universal suffrage have, in the history of this country for the past two generations, much to point to in their favor. It was to the decision of universal suffrage that both parties appealed in turn on each of the following momentous questions, which may be said to have determined the course of our history from 1850 to the present time—the restriction of slavery and its exclusion from the territories; the support of the necessary measures for carrying on the war during the rebellion; the attempted repudiation of the national debt; the policy of reconstruction, civil-service reform, and the gold standard. That is to say, on all these critical questions the appeal was to the ballot, which in every case finally sustained those who took the side which we confidently expect will prove in the end to have been the right side.

We may perhaps be able to add to these triumphs the decision of the long battle now waging

between what is called Bryanism and constitutional government, *i. e.*, between socialistic attempts to make the government an engine for the redistribution of wealth through the destruction of the constitutional power of the courts to enforce their own decrees and to protect property. If so, I think there will be a general admission that universal suffrage has answered the first great practical test applied to it pretty well, and to have justified the expectations of the original advocates of the theory of popular government. For the foundations of that theory we have to go back, as already explained, not to Rousseau or Jefferson, but to Bentham, who was the first writer on government to furnish the utilitarian reasons for a belief in it. It being settled that the welfare of the community is the object of government, how is this to be secured? His answer was that since this welfare was continually threatened on every side by sinister interests, and factions deriving their support from them, the only way to secure it was to defend it through the power of the only class whose interest was that welfare, that is, the power of the whole community itself, exercised freely—that is, through the secret ballot. But the suf-

frage of the whole community is universal suffrage, and the instances given are instances of the triumph of the interests of the whole community over special interests, and what used to be called faction connected with them. Although it is dangerous to reason from one country to another, especially to a country of a different race, language, religion, and laws, it may be suggested that the superior stability of the present French republic over the governments which preceded it shows that the working of universal suffrage, when perfectly free, is toward a satisfactory settlement of questions. Of course, when universal suffrage is more or less under the control of the executive it may produce surprisingly different results; under the second empire it supported arbitrary government; in South America it can be turned first to the support of one revolution, then of another; but, when it is free, it seems to have the power of furnishing the great virtue of strength and permanence to the policy of the state.

Nor is there any reason for thinking universal suffrage a bad contrivance for determining which among a number of candidates for high and conspicuous executive office is the best, provided

the candidates have been a long time before the public and their merits thoroughly canvassed *pro* and *con*. The successful candidates for the presidency in the last sixty years have compared favorably with those of the previous half-century, while conspicuous defeats of inferior candidates have helped to re-enforce the proof. The two elections of Lincoln, the two elections of Cleveland, the defeats of Greeley, Butler, and Bryan, seem in retrospect to show that the people as a whole are at least as likely to decide well as the old constituencies founded on property were. Its magnates have shown, perhaps, less originality than those of the earlier period, but the whole world is thought by many persons to have been more full of originality and character under the old régime than it is now. The tremendous absorption of the most powerful and ambitious minds in money-getting is enough to account for this in great measure.

It is not here that the abuse of universal suffrage is apparent, but in the attempt to use it as a universal test for the settlement of all questions, no matter whether the electorate has had time to consider them or not, and to use it as the every-day machinery for enforcing that

"responsibility to the people" without which popular government cannot last.

Universal suffrage, *i.e.*, the general electorate, can answer a question yes or no successfully, or decide successfully between candidates for office placed before it, if much opportunity for deliberation and discussion precedes its use, and it is only used at considerable intervals of time. As applied to elections, it can only exercise an intelligent choice as to a small number of offices. The shorter the intervals and the greater the number of offices, the less opportunity for deliberation and discussion in the electorate, the greater the power of the machine, and the less the responsibility to the people.

There are some things which it cannot ordinarily do. Direct primaries are a contrivance for as near an approach as may be to the use of universal suffrage, or "direct democracy" (*i.e.*, the entire electorate, as divided into parties), for the business of nominating to office. Direct primaries would apply to any office from President and senators down.

The question here, of course, is not whether the election secures responsibility *in office*, but whether the nomination is really *by the electorate*.

ate. If my view of the subject is correct, the electorate *cannot*, of its own motion, make ordinary nominations. Nomination to office usually is the work of one man or a small number of men, not of the public at large. You cannot canvass the fitness of a man, or get up a "ticket," or slate, by means of it. Hence, primaries, whether of the old-fashioned kind or direct primaries, will rarely do more than ratify names from a list already prepared by *somebody*. The old caucus nominated, and a caucus can nominate to-day, but this is because a caucus is a small and secret body in which it is possible to discuss the thousand and one delicate questions which enter into a nomination without dread of consequences; but the delegate convention, invented to take the place of the caucus and make nominations more popular, has seldom done anything more than ratify nominations prepared for it. If the successful man is a favorite, his name is brought to the convention by his supporters; if he is a "dark horse," the moment when his name is to be made known is prearranged. Of real public debate of qualifications of candidates, even in a delegate convention, there is rarely any. The function of the con-

vention is to vote; its speeches are perfunctory "presentations" of candidates.

Exceptions prove the rule. Occasions now and then arise when a very conspicuous man is forced into nomination to high office by a general consensus of opinion. The first nomination of Washington, the second of Lincoln, the nomination of Mr. Tilden against the wishes of the machine, the second nomination of Mr. Cleveland, and the nomination in New York of Governor Hughes are instances in point. But in such cases almost any machinery would work in the same way; the press usually proclaims and advertises the popular demand, and the machine gladly accepts, or is forced to take the candidate, exactly as if it had received a mandate from the electorate.<sup>1</sup>

<sup>1</sup> The authors of the *Federalist* have been criticised for not perceiving in advance that the business of nomination for office is not generally adapted to the canvassing of the constituency itself. The constituencies which they had in mind, however, were small, the suffrage was restricted, and the number of offices which they had in mind was also small. It certainly does not lie in the mouth of the introducers of direct primaries to criticise them on this account, for their mistake consisted in thinking that nominations would be managed by direct primary consultation of voters under circumstances vastly more advantageous to the experiment than those of our time. At this date (May, 1912) there are in Kansas—a typical Western community—10 State officers to be elected, 3 justices of the State Supreme Court, 1 United States Senator, 8 Congressmen, 13 county officers, 125

To go back to the question of the possibility of obtaining responsibility, the original idea was that if the representative (to confine the matter to the legislature) did not turn out well, he would lose his seat. But when elections are frequent, and there is no time for the public opinion of the constituency to have become fixed on the conduct of the representative, and when the machine supports him and gives him his nomination, it becomes almost impossible for his constituency to enforce his responsibility. I think it may fairly be said that the amount of individual responsibility obtained to-day in the United States by the operation of universal suffrage upon the legislature and Congress is at its lowest ebb. We have already considered how the matter stands with respect to the nominations of administrative officers which have been made elective.

State representatives, 40 State senators, and 10 presidential electors. It is said that four parties will have candidates for the State offices, and that there will be at least three for each county position. It is calculated by the Secretary of State that a body of 8,000 men are or have been circulating nomination petitions. He therefore suggests a new scheme for the purpose of restricting the number of candidates and reducing the volume of nominating business, by providing that there shall be an entrance fee for candidates, the candidate for governor or member of Congress, for instance, paying \$150, while for a county office the stake might be lowered to \$10.

It may be said that every government tends to perish through the idolatry of its own fetish. The fetish of despotism is arbitrary power; it is applied to everything; all questions are settled by it, and it finally works out its own destruction and the state's (military empires, such as Alexander's and those of the two Napoleons, are familiar instances), leaving a crippled community behind to work out its own salvation as best it may. The fetish of aristocracy is privilege; it resorts to privilege as the oracle to answer any question. Down to the middle of the eighteenth century, the whole of Europe was a net-work of privileges and correlated duties originally embodied in the feudal system. When Mirabeau was asked how he came to be such a believer in equality, he said that he did not care much about it for its own sake, but had taken it as the best club with which to attack privilege.

Democracy has at least two idols, of which one is the false worship of equality as always an end in itself, and which treats it as an object of government to introduce equality, not merely of right and opportunity, but of condition; the other, the worship of the ballot as a universal means of curing all ills and enforcing responsi-

bility. The inevitable result is the continuous exercise of elective machinery, the multiplication of elections and of offices, and the division and dissipation of responsibility for the better division of patronage and spoils. Either the state must be exhausted by the expense and general irresponsibility entailed, or it must abandon its idols and give up the false theory of responsibility which deludes their worshippers. Of one thing we may be always sure, that to the community at large good government will always be vastly more important than the forms by which it is secured, and that in its effort to furnish this, any form of government is always on its trial.

For those who do not believe in the power of free institutions to right themselves can always point to two very serious defects in democratic tendencies which have always marked it whenever it has been introduced—its tendency to attack property and try to alter by legislation the natural law which gives the control of it in the long run to the thrifty, the industrious, and the ambitious, and the tendency to invoke in aid of this process all the power of a centralized government, more and more centralized for the

purpose. Socialism and centralization are other names for these tendencies. With them have often gone in the past imperialism and militarism. In other words, it is absolutely true there is an inherent tendency in democracy to produce its opposite—despotism, and we see plenty of evidence of it about us.

Those who maintain, as we maintain, that democracy has still the power within it to rectify its course must, if the view taken here is correct, rest our case on the belief that the basis of the government—the general state of character and opinion in the electorate—is sound, and that a way will be found to substitute a true for a false theory of responsibility. The absurd worship of a ridiculous idea inherited from the past, that if we can only vote often enough, and have as many elective offices as possible, we shall secure responsibility to the people, is the highway to failure. If it were true, we should inhabit a political paradise in New York. On election day with us every one votes for a dozen candidates whose very existence, except that their names appear on the ballot, is unknown to him; and if he wishes to study his rights and duties as a voter, he is referred to a technical volume of

some five hundred pages, most of which is incomprehensible except to trained experts, and told that this so-called election manual is the palladium of his liberties, and that if it is not entirely intelligible he can consult a lawyer.

Continuous suffrage is not a final solution of all the problems of government, nor an assurance of responsibility in government; to be successful it must be sparingly used, and only by electorates which are fitted for it, and only for questions about which there has been ample time for discussion and deliberation.

Evidences of reaction against the false notion that responsibility can always be secured by a vote may be seen in several quarters. Negro suffrage in the South, apparently made necessary in the interest of reconstruction, disappeared through the demonstration of its own irresponsibility. Deplorable as this result may seem in the light of our aspirations for equality, it is undoubtedly more in the interest of good government than equal suffrage supported by bayonets and ruining civilization, such as reconstruction forced upon us to establish temporarily in the South. And it is a perfect illustration of how little the community, in

O, wad some gift the gift we give us  
to see ourselves as others see us.

the long run, cares about an abstraction as compared with good government, that the most languid interest has been taken, throughout the country at large, in the fact that the South has refused to tolerate the political equality of the races. The same thing may be said of the general acquiescence of the country in the abolition of the suffrage altogether in the District of Columbia. Washington has been governed for a generation by an appointed commission. Those who choose to live in the capital of the United States have no vote. To be sure, the question was complicated by Washington having a large negro population; but it was not made a race question. The real reason why Washington was disfranchised, to the general satisfaction of everybody, was that universal suffrage as applied in our way through constant elections and for a multitude of officers had resulted in wide-spread corruption and virtual bankruptcy.

And it is beginning to be seen now that the use of universal suffrage, as we have attempted to use it, inevitably tends to produce the same result everywhere; and in more than one instance, in smaller municipalities, the system has been

temporarily swept away, and for it substituted a commission charged with plenary powers of government, itself elective, but holding office for a sufficient time to secure responsibility, and ridding the city meanwhile of the whole network of subordinate electoral machinery which produces what we call the machine.<sup>1</sup>

If the difficulties under which New York and Boston are represented by their press as laboring were attacked, as I have suggested, by substituting for their present system a commission with full powers, elected by universal suffrage, with a tenure of office lasting for a number of years, it would violate no principle of popular government, and would for the time put an end to the business of the local machine. If such a commission, with a mayor at the head of it, were adopted as a permanent form of government, the local machine would go out of business. It must be remembered that the work of governing these great cities in which we live, and which contain half our population, is almost altogether administrative; it consists almost entirely of the work of policing, of sanitation, of care of streets and

<sup>1</sup> For a full account of the growth of the commission system since this was written, see "Commission Government in American Cities," by Ernest S. Bradford (Macmillan, 1911).

bridges, of parks and public places. The laws affecting life, liberty, and property are passed by the legislature; justice is administered by courts established by the State. Municipal administration is almost wholly administrative.

As responsibility is broken down through short tenure and frequent elections, it must be restored through their opposites, longer tenure and fewer elections. The movement for biennial legislatures has already been referred to. A regular triennial legislature is probably all that is needed, and with this, of course, lengthening of tenure of executive terms.

To get responsibility you have got to get responsible men for the offices, and responsible men mean men who are trusted for a time long enough to give them an opportunity to show their character. You cannot get a responsible man for a post involving the exercise of authority if you tell him, "I am going to make you responsible for this work, or the administration of this office, but if I like to make a change I am going to put in a new man in your place at the end of a year." The person selected will answer, if he is capable of responsibility, "I cannot take the place on such terms. You must

give me time to make preparations, to actually accomplish something, to show what I can do." It may be said that there is a law of responsible tenure—that to secure responsibility the tenure must be at least sufficiently long to enable the incumbent to show that he has met the requirements or is unfit for them.

One of the favorite delusions of the subject is that higher salaries will of themselves increase responsibility. Higher salaries may make it possible for a better class of men to take the office, as in the case of judges, but they will not of themselves produce responsibility. In New York the salaries of judges are, for this country, high, but it has not made them much better—most of them owe both salary and office to the head of Tammany Hall, who can take away both. The Federal judges, with long tenure and lower salaries, are far better illustrations of responsibility in office. The lengthening of judicial tenure in New York has, it is believed, produced an improvement.

To review now the whole field, we began with a statement that a principle underlying all government was responsibility to the sovereign, which in popular government necessarily means

responsibility to the people. So far as popular government attains its ends it must be through responsible agents, and consequently the fundamental question with reference to government in this aspect is, How is responsibility to be secured and maintained? Two answers only have been given to the question, one that which is embodied in the Federal Constitution, and the other that which is derived from the writings and teachings of doctrinaires, some of them no doubt great men, but doctrinaires on this point because they undertook to deduce from an entirely sound principle relating to sovereignty a doctrine of universal application by which all political questions would be answered—the doctrine that to secure responsibility all that was necessary was to make an agent of the government elective and to give him a very short term of office. Acting upon this mistake, they embodied it in the later State constitutions, and, having first introduced universal suffrage, applied it in time, not merely to legislatures, where only it had its original justification in the long historical struggle with the executive, but to judges, governors, sheriffs, prosecuting officers, and almost every official, town, county, and State,

throughout the commonwealth. Meanwhile, by a further and most grotesque misapplication of the same idea, it was introduced into the Federal service in the form of a civil service with a tenure lasting no longer than that of the appointing power, accompanied further by the ancient doctrine of "rotation"; "rotation," kindled into new life by the delusion of frequent elections of representatives, was applied to a branch of the public service in which election had no place, and in which "rotation" meant patronage, and patronage, as always, meant favor or corruption. By this means was originally established throughout the Union what is known as the machine—which sapped the foundations of responsibility in the Federal service by parcelling out among senators and representatives the appointments for which the Constitution made the President responsible. Side by side with this grew up the congeries of nominating committees and primaries, which found its ripest local expression in Tammany Hall, and its wonderful congener, the New York Republican "organization," and which is aptly designated whenever it works smoothly as the machine, an organization of politicians and "workers" wholly irre-

sponsible to the government, which determines who shall and who shall not be nominated and voted for; which, embodied in the primaries, sends its delegates to the conventions, while these in time fill the legislature with creatures so dependent that (to adopt the term which Justice Hughes used of delegates) they too might as well on all critical occasions be "inanimate." This machinery very soon became so perfect that it extended its operations to Washington, and there began to fill the seats of senators and representatives with puppets of the machine.

A later stage, in which the working of the machinery becomes well understood and rich men find that it can be conveniently used to get themselves or their agents into the Senate or the presidency need not be discussed here, but obviously it does not promote responsibility to the people.

The main thing to bear in mind is that the constant tendency of any such system is universal irresponsibility, *i. e.*, the disintegration of government itself. An agent of the government is nominally responsible to the President, but actually holds his power subject to the favor of the "senior Senator" from North Utopia;

another is responsible to the electorate for the discharge of his duties as a judge, but actually to the manager of the "Hall," for whom or for whose friends he is expected to use his patronage in return. The bipartisan commission of gas, electricity, water, telephone, and telegraph, nominally responsible in office, first divides its power into functions corresponding with the differentiation of its patronage; then makes its respective members channels through which the gas contracts and the electricity jobs and the contracts and jobs connected with water, telephone, and telegraph find their proper outlet—as arranged by the irresponsible boss or committee at whose instance the respective salaries of the irresponsible commissioners are placed at their disposal.

At the whole wonderful system the first effective blow that was ever struck was the introduction of the merit system in the Federal civil service, supplemented now by the same system in States and cities. This has had the effect of making responsible to the people several hundred thousand government agents, who were before paid by the government, but owed what tenure they could boast to unknown, or only too well

known, persons (themselves not responsible for the consequences in any way). So far the consequences of the great democratic mistake as to responsibility have been brought to an end, or put in the way of being ended.

At the electoral "machine," with its cohorts of workers and committees and delegates and "bosses," hardly an effective blow has yet been struck. It often seems to be in prime vigor, but there are some indications that this is not so. At any rate, if the machine is to be destroyed it can only be through the introduction of responsible government in its place, and this can only be done by retracing our steps and abandoning the attempt to obtain responsibility through frequent elections and short terms and the multiplication of offices. Universal suffrage must be left to solve the problems to which it is adapted —to answer the serious questions of state which in a republic can obtain no permanent settlement in any other way, and to decide who shall fill those offices of state which are not primarily judicial or administrative.

All this perhaps throws some light on the question whether it is worth while at the present time to consider the question of woman suffrage.

If there is anything in what I have said, and I claim as corroborative evidence nothing better than the files of the daily press, filled as they are with unceasing complaints of the evils the causes of which I have endeavored to analyze, we are confronted by as momentous a problem as has presented itself to a free people, the question how to restore responsibility when it has been lost or undermined. The work has been begun, but the greater part of it remains to be done, and for its accomplishment it seems to be requisite that the machinery of government shall be greatly simplified, that terms of office shall be lengthened, that nominations shall be few and free, that elections shall be less frequent, and judicial and administrative offices made, as far as possible, non-elective. In other words, we must go back as far as may be to the scheme of government which the founders of the Federal Constitution had in mind and away from which we had been moving down to the time of the adoption of the civil-service reform. To this end we must be prepared to lengthen legislative service, to encourage independent nominations, to go back to a tenure during good behavior for judges, to put cities into the hands, not of the

"Hall" or the "organization," but of a smaller number of fit men, holding office for a long term, under whom there will be experts and a permanent civil service, and we must endeavor to rid ourselves of the idea that a modern capital is like a mediæval city, or can derive the slightest benefit from a sham parliament.

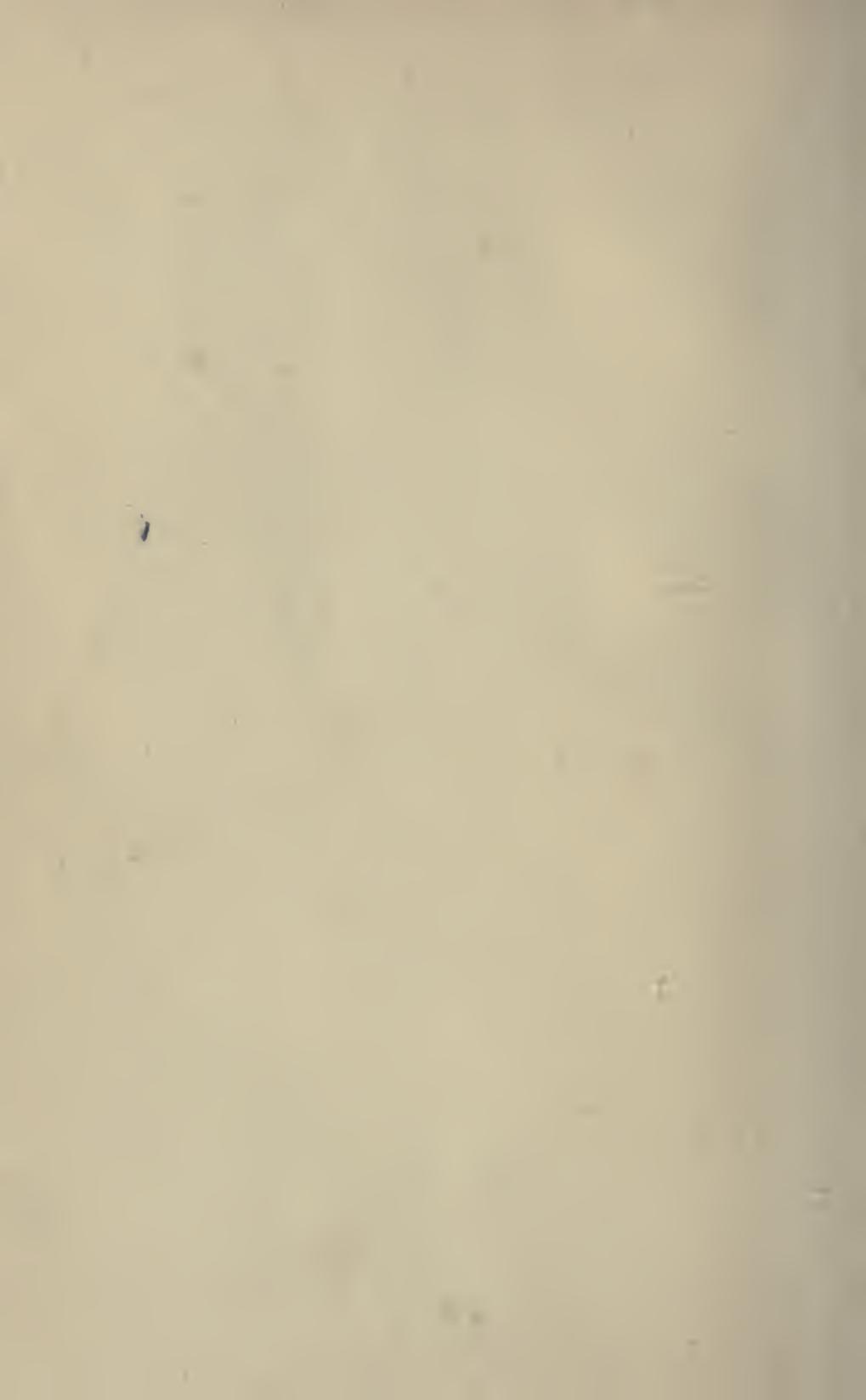
In a situation like this it is proposed to add to the electorate all the adult women in the community. Now, without any regard to sex, it seems to me that after what we have gone through, and in the light of the experience we have had, to double the electorate would be a very foolhardy experiment, unless for some very grave reason. Women are undoubtedly very different from men, nor can it be denied that they can play a very active political part. They have commanded armies and fortresses and governed kingdoms; and been important factors in upsetting them. There is no reason, therefore, to think that they would not furnish the best material for the new machine which the interests of women would undoubtedly demand. Fifteen millions is the number of votes with which the present male machine carries on its business, and while some of the interests of male

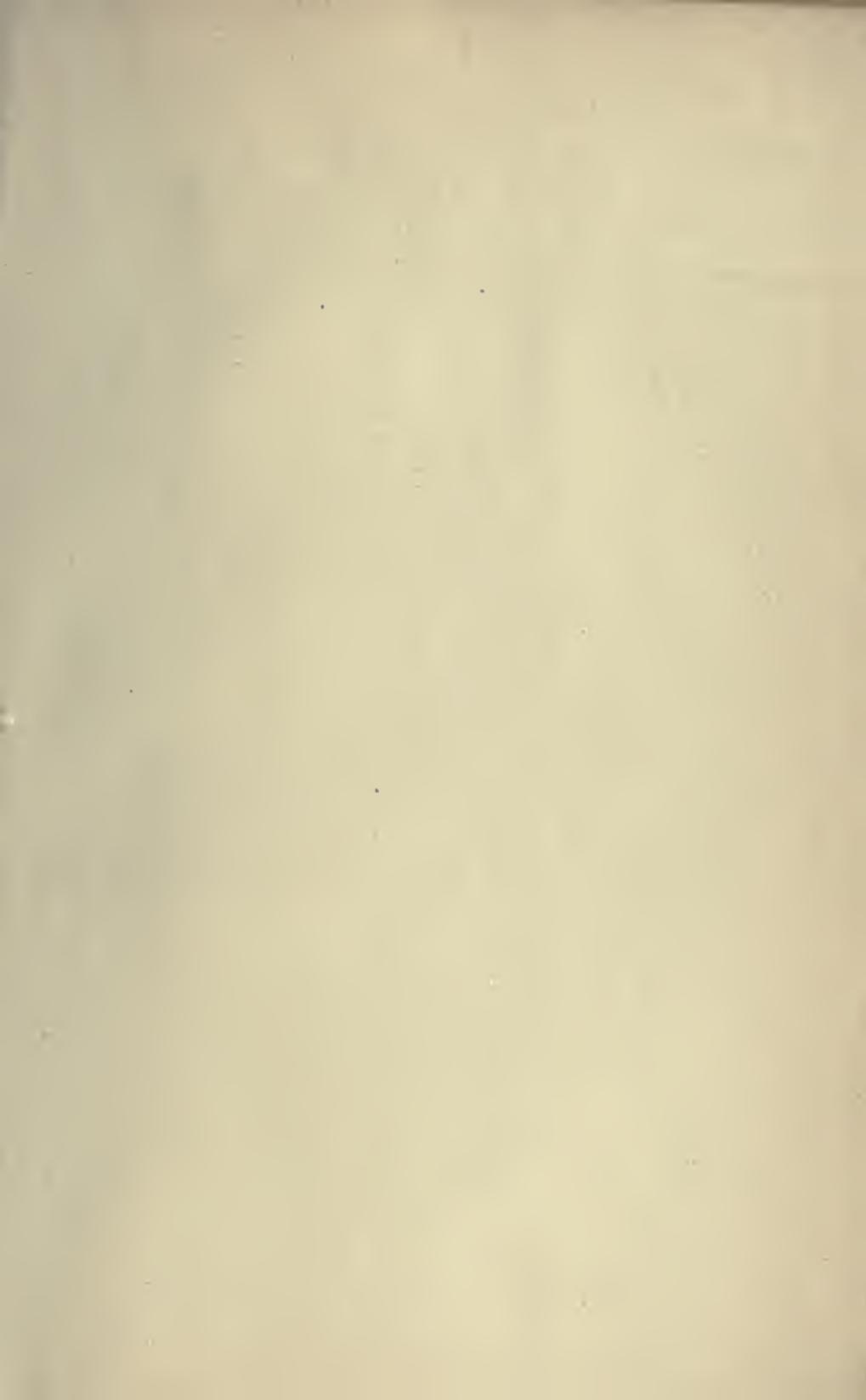
voters are the same as women's, a great many are not. But, whether we had a new woman's machine in addition to our own or not, there would certainly be just twice the number of votes for the vote brokers of one or both sexes to deal with, and it is therefore very hard to see why the proposal to let women vote is not really a proposal to double the power of the machine, or, at any rate, vastly to increase it. Whether the suffrage is a privilege or a right or a burden, the community at large must determine on what terms and by whom it is to be exercised; but at a time that it is beginning to be perceived that we have seriously increased our difficulties by giving suffrage tasks to perform for which it is unequal, it seems rather absurd to plunge ourselves into worse complications by doubling the whole electorate, and consequently making all the machinery twice as cumbrous as it now is. Democracies, like individuals, are ruined on the side of their natural propensities, and if democracy is to be saved, it must be by its women as well as its men learning that we are not saved by worship of false gods. Any man in mature life who reflects upon the paltry amount of real influence a single vote means, in comparison with

the authority which character, intelligence, ability, eloquence, and wealth bring to bear upon affairs, must find something very pathetic in the simplicity which imagines that responsibility in government will be increased by doubling the size of the electorate. To the machine, of course, any increase in electoral business is a direct advantage.









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